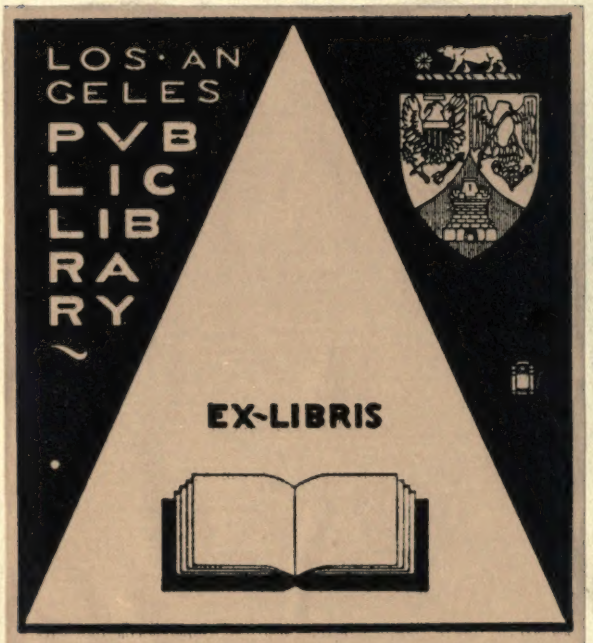

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other Papers Relating to Legislation from the Organization of the First Colonial Assembly in 1683 to and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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VOLUME X

1899-1906

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PREFACE.

178159
MAR 8 1910

The administrations of Governor Roosevelt (two years), Governor Odell (four years), and Governor Higgins (two years), make up the contents of this volume.

The investigation into canal affairs begun during the administration of Governor Black was continued in another form, with special reference to the enlargement of the canals resulting in the act of 1903, authorizing the construction of the barge canal which was approved by the people at the election in that year. An extraordinary session of the Legislature was held in May, 1899, for the purpose of considering the subject of taxing special franchises, resulting in the establishment of a new policy relating to the taxation of corporations. There was also a general revision of the civil service laws in 1899. The policy of the State relative to the purchase of forest lands was modified during the administration of Governor Odell, and several State departments were consolidated, including the University and the common school department.

During the administration of Governor Higgins legislation was enacted relative to the taxation of mortgages, and of transfers of stock. There was also an investigation of the affairs of life insurance companies resulting in important legislation on this subject in 1906. In 1905 the Legislature held an extraordinary session to consider complaints against Justice Hooker of the Supreme Court. During the period covered by this volume several constitutional amendments were adopted providing among other things for a large increase in the number of justices of the Supreme Court and in the establishment of a new policy relative to highways.

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Theodore Roosevelt

MESSAGES FROM THE GOVERNOR.

1899. JANUARY 2. LEGISLATURE, ONE HUNDRED AND TWENTY-SECOND SESSION.

THEODORE ROOSEVELT, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 2, 1899.

TO THE LEGISLATURE.—The people of New York, like the people of every other State in the Union, are to be congratulated, because during the past year the nation has carried to a brilliant triumph one of the most righteous wars of modern times. When last spring it became evident that the interests of humanity and of national honor alike demanded that we should drive Spain from the Western Hemisphere and free from her tyranny the subject peoples of the islands of the sea, New York responded with eager zeal to the call for volunteers, and in the Cabinet, in Congress and in camp, her representatives did all they could to ensure the success of the American policy. We are not merely New Yorkers. We are Americans; and the interests of all Americans, whether from the North, the South, the East or the great West, are equally dear to the men of the Empire State. As we grow into a mighty nation, which, whether it will or not, must inevitably play a great part for good or for evil in the affairs of the world at large, the people of New York wish it understood that they look at all questions of American foreign policy from the most thoroughly national stand-

point. The tropic islands we have taken must neither be allowed to lapse into anarchy nor to return under the sway of tyranny. War is a grim thing at best, but the war through which we have passed has left us not merely memories of glory won on land and sea, but an even more blessed heritage, the knowledge that it was waged from the highest motives, for the good of others as well as for our own national honor. Above all, we are thankful that it brought home to all of us the fact that the country was indeed one when serious danger confronted it. The men from the East and the West, from the North and the South, the sons of those who wore the blue and of those who wore the gray, the men of means and the men who all their lives long had possessed only what day by day they toiled to earn, stood shoulder to shoulder in the fight, met the same dangers, shared the same hardships and won the same ultimate triumph.

In our domestic affairs, the State is to be congratulated on the gradual return of prosperity. Though temporarily checked by the war this return has been, on the whole, steady. The capitalist finds constantly greater business opportunities; the wageworker, in consequence, is more steadily employed; the farmer has a better market.

TAXATION.

No other question is of such permanent importance in the domestic economy of our State as the question of taxation. At present our system of taxation is in utter confusion, full of injustices and of queer anomalies. It is an exceeedingly difficult subject, one well worthy the attention of our best men, the men with most highly trained minds and the broadest practical experience; men who are able to approach the subject from the standpoints alike of the farmer, the merchant, and the manufacturer. Not only is it necessary to consider whether any kind of tax ought, if practicable, to be levied, but whether it is in fact practicable to levy it. We

should discourage the building up of non-taxable interests, and yet we should discourage driving property out of the State by unwise taxation, or levying a tax which is in effect largely a tax upon honesty. I most earnestly commend the whole matter to your special attention.[1]

CANALS AND COMMERCE.

New York State took the lead in this country in the promotion of a canal system, and the operation of the Erie Canal has been of incalculable benefit, not merely to Buffalo, New York and Brooklyn and the cities of the Mohawk Valley, but to all of the State; for, when a part of it is benefited, the benefit is shared ultimately by the whole.

Of recent years the city of New York has fallen off relatively to other cities as regards the increase of her commerce, and in exports there has been a positive decrease. Under my predecessor a commission was appointed to examine into the causes of this decline. I recommend that this commission be allowed ample additional time to close its work, the subject being one of such vast importance, and that it be given all needful aid.[2]

The canals at present are in such condition that the money already expended will avail nothing if the work is discontinued. As a chain is only as strong as its weakest

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[1] A joint committee of the Senate and Assembly, as recommended in the Governor's special message of March 27, was appointed by a resolution adopted by the Senate on the 25th of April, and by the Assembly on the 28th. The committee was to be composed of three senators appointed by the President, and four members of Assembly appointed by the Speaker, was vested with general power to examine the whole subject of taxation, state and local, and was directed to report to the Legislature of 1900, not later than the 15th of January.

Chapter 572, appropriated $15,000 for the expenses and disbursements of the committee. The report of the Committee was presented to the Legislature on the 15th of January, 1900.

[2] As to the New York commerce commission, see 1898, note 3, *ante*, vol. 9, p. 826.

link, so the navigability of the canals is determined by the shallowest sections. While I do not now recommend the voting of any large amounts of money, yet in fixing up those different parts expenditures that can be clearly made within the constitution should be authorized.

It is essential to the State no less than to the city of New York that our commercial supremacy should be maintained. With this end in view the canals should be administered economically and with an eye single to the welfare of the whole people. Any man, whether public servant or contractor, who in any way defrauds the State or perverts the business of the State to his private gain must be dealt with as rigorously as the laws will permit.

The Canal Investigating Commission, appointed by my predecessor pursuant to the provisions of Chapter 15 of the Laws of 1898, has completed its work and made its report. Its work has been of great service to the State. The act provided that the commission should serve without pay, but should receive the actual and necessary expenses incurred in the performance of its duty. The commission was also authorized to employ counsel, experts, engineers and such other assistants as it might deem necessary. The time for making its report was extended by my predecessor to the latest date authorized by law, and the investigation made was broad in its scope and searching in its nature.

In addition to the report of the commission required by law, which is herewith transmitted to you, a supplemental report of the commission's expenses has been made and filed, by which it appears that the appropriation made for the expenses of the investigation has been exhausted, and that it will require an additional sum of eleven thousand eight hundred and sixty-nine and fifty-one one-hundredths dollars to discharge the obligations of the commission properly incurred in the performance of its duty. I recommend that the further sum of twelve thousand dollars, or

so much thereof as may be necessary, be appropriated without delay, for such purpose.

I shall later communicate with you further on the subject of the canals and as to the exact course to be followed in regard to them.

LABOR INTERESTS.

Of late years there has been a tendency to extend the sphere of State action in various directions. This is a tendency which may readily be carried too far, and the State should give expression to it only when the good to be achieved is undoubted, and when there is no reasonable probability that it will be counteracted by harm. Nevertheless, much good has resulted in the past from such State action. In bygone ages, when wrong most frequently took the form of brutal violence, the aid of the State was invoked to shackle force; and exactly as we have shackled force in the past, so it may be necessary more and more to shackle cunning in the present. The right to interfere against the individual who does wrong by craft is, of course, as great as the right to interfere against one who does wrong by open violence; though it is a much more simple matter to interfere effectually in the one case than in the other. Great care, however, must be exercised in the interference. The machinery of business is delicate and complicated, and if it is improperly disarranged or interfered with, the harm, which at first falls on the business men of greater or less wealth and on the corporations, will ultimately be distributed throughout the community at large.

In dealing with the interests which we have grown to group together as the interests of labor, we must always keep in mind the fact that ultimately each man's salvation rests mainly with himself, and that no amount of legislation or of combination can supply the lack of individual initiative — the lack of individual energy, honesty, thrift and industry. Yet this capacity for individual self-help can, and

should, be generally supplemented by that form of self-help that follows on organization and association, as has been shown by the careers of many of the trade unions and labor federations; and sometimes it can be supplemented by the direct action of the State itself.

The development in extent and variety of industries has necessitated legislation in the interest of labor. This legislation is not necessarily against the interest of capital; on the contrary, if wisely devised it is for the benefit of both laborers and employers. We have very wisely passed many laws for the benefit of labor, in themselves good, and for the time being sufficient; but experience has shown that the full benefit of these laws is not obtained, through the lack of proper means of enforcing them, and the failure to make any one department responsible for their enforcement.

At present the enforcement of the law regulating the hours of labor of minors under fourteen years of age and of women employed in mercantile establishments, and the sanitary condition of stores and buildings used for similar purposes in large cities, is left to the board of health. If the city government fails to furnish the proper appropriation and appoint the necessary officers to carry out the law, as is at present the case in New York city, it is practically a dead letter.

Another important statute of this character relates to providing secure scaffolding in the erection of new buildings. The law on this subject is all that could be desired, but its enforcement is left to the city police, and, as a matter of fact, practically no provision is made for carrying it into effect. In New York city, where this law is most needed, police officers are unacquainted with the character and requirements of the law. Most of them, indeed, are not aware that the enforcement of this law is any part of their duty.

The law regulating the hours of labor on surface railroads is also an excellent provision against the tendency to

work the men an almost unlimited number of hours. The enforcement of this law is left to the Railroad Commissioners. As they have no active force to use for such a purpose the law fails by default, except when individual citizens undertake the prosecutions. The employee himself will rarely or never complain for fear of being discharged.

In order that the desire of the people, definitely expressed in this wholesome legislation, shall be made effective, I recommend that the enforcement of the entire body of legislation relating to labor be placed under the Board of Factory Inspectors. This would simplify the whole question of labor legislation and place the responsibility for its enforcement where it properly belongs, and would also give the maximum efficiency of service with the minimum cost to the State. With a slight increase in the general force of factory inspectors, this work can be done for the whole State, and the object of the legislation be satisfactorily secured to the people. I recommend that the Legislature provide for additional factory inspectors, so as to bring the total number up to fifty, and also that the Governor be empowered to appoint unsalaried deputies.[3]

Another very important phase of this subject is the sweat shop system, which is practically the conversion of the

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[3] Chapter 192, passed April 1, amending the labor law of 1897, chapter 415, authorized the appointment of not more than fifty deputy factory inspectors, and contained regulations relative to the inspection of scaffolding, ropes, blocks, pulleys and tackles in cities, protection of persons employed on buildings in cities, hours of labor of minors and women, including the change of hours; protection of employees operating machinery; inspection of boilers in factories; and devolved on the factory inspector the duty of enforcing the foregoing provisions.

Chapter 375, passed April 19, prohibited the employment of any male child under the age of eighteen years, or any female "in any factory in this State operating or using any emery, corundum, stone or emery polishing or buffing wheel."

The provision in chapter 192, relative to the prevailing rate of wages was held unconstitutional in People ex rel. Rodgers v. Coler (1901) 166 N. Y. 1; Ryan v. New York (1904), 177 N. Y. 271.

poorest class of living apartments into unwholesome, pest-creating and crime-breeding workshops. Laws have been enacted by the Legislature to suppress this vile phase of industrial life in our large cities, by prohibiting the use of dwellings for the purposes of manufacture. Although the law is quite explicit, and the intention of the Legislature obvious, great difficulty has been experienced in its effective enforcement. It is everywhere agreed that this tenement house, or " sweat shop " system is degrading to the unfortunate individuals engaged in it, and to the social and moral life of the community in which it exists. How to enforce the law on this subject has perplexed the statesmen of other countries and States as well as our own.

The most effective and uninquisitive means yet devised for accomplishing this end is that recently adopted by Massachusetts, viz.: providing that buildings used for manufacturing purposes must have a permit or license such license or permit to be granted only on condition that the appointments of the building fulfill the requirements of the law for manufacturing purposes. These permits or licenses ought to be granted by the Board of Factory Inspectors, who should be held responsible for the proper inspection of the buildings and the enforcement of the law.

There are several reasons why this simple method would be effective. It would at once classify buildings used for manufacturing purposes, as a building so used without a permit would be violating the law. It would prevent much friction, because all requirements of the law would have to be fulfilled before the building was used. This would be a great advantage in the erection of new buildings, as proper conveniences, including accessible fire escapes, guarded elevators and other appointments would be required and easily furnished when new buildings were being erected or when old ones were being changed for manufacturing purposes. Nor does this involve any radical innovation. It is simply applying the recognized principle upon

which boards of health now everywhere act in requiring that the plans for erecting new buildings or alterations of old ones must be submitted to the building and health department and a certificate of approval granted, before the building can be erected, alterations made or the premises occupied. Legitimate manufacturers will not object to this, because they are desirous of furnishing safe and wholesome appointments for their employees. Only those who desire to evade the law and disregard the common demands of sanitation, domestic decency and wholesome industrial methods will object, and it is these the law desires to reach.

I submit this to the serious consideration of the Legislature, and suggest that an amendment to the law embodying this idea be adopted, to the end that the uneconomic, unwholesome and un-American sweat shop system shall disappear from our industrial life.[4]

The law requiring an eight-hour day and a prevailing rate of wages for State employees is not entrusted to any authority for enforcement. If this law is to remain on the statute books, it should be enforced, and, therefore, the Legislature should make it the particular business of somebody to enforce it.[5]

A recent decision of the Court of Appeals has decided unconstitutional the law which provides that there shall be a mark on prison made goods, indicating that they are such.[a] This matter should receive the attention of the Legislature in order that some means may be devised

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[4] Chapter 191, passed April 1, required a license for the manufacture of specified articles in any room or apartment in any tenement or dwelling house, or in a building situated in the rear of any tenement or dwelling house, and contained provisions regulating tenement house labor.

[5] Chapter 567, approved May 12, contain provisions for the enforcement of the eight hour law. See memorandum of May 12, approving the bill. See cases cited in note 3.

[a] See People v. Hawkins (1898) 157 N. Y. 1.

whereby the free mechanic shall not be brought into competition with prison labor.

The Bureau of Labor Statistics, the Board of Mediation and Arbitration and the Factory Inspector's Department must be brought to the highest standard of efficiency and usefulness. The work of these departments, to report the actual conditions of labor, to seek to establish harmonious relations between labor and capital, and to enforce such labor-legislation as has met with the approval of the people of the State, is of supreme importance. The efficiency of their service concerns not only those immediately affected, but also the entire public, and they should receive our prompt and cordial co-operation in every attempt to fulfill their respective duties.

The Bureau of Labor Statistics in collecting the material for its reports has received valuable aid from manufacturers and officers of labor organizations. The reports of the department must be practical, strictly accurate in all statements of fact, and based on investigations conducted in accordance with modern scientific methods.

In various trades the relations between labor and capital have frequently been adjusted to the advantage of both by conferences between intelligent employers and reasonable workingmen. Such mutual understanding is in the highest degree desirable; it promotes industrial peace and general prosperity. Where disturbance exists, and before it has gone too far, the Board of Mediation and Arbitration should seek to secure a fair settlement of the difficulties and a re-establishment of harmonious relations. It should also constantly endeavor to promote the extension of intelligent methods of settlement of labor disputes so that, through the recognition by each party of the just rights of the other, strikes and lockouts may yield to wiser and more peaceful measures.

THE NATIONAL GUARD.

The National Guard of this State requires especial attention. During the past year the Guard was suddenly called upon to supply deficiencies in our scheme of National defense, due to the very small size of our regular army, which was, and is, totally inadequate to the necessities of the nation, admirable though the army itself is in quality. The emergency was so sudden as to necessitate the calling out of the men of the National Guard regiments, the time to raise and discipline ordinary volunteer regiments being lacking. It is much to be hoped that some well thought out plan may be adopted by the National Government for the use of the Guard in any future war. It would probably prove wisest to order out the Guard for use in the United States, thus freeing the regular army for any expedition, at the same time calling for volunteer regiments, into which those guardsmen who wished might go; then, when the volunteer force proper had been put in fair condition, the Guard could be ordered home. In other words, the Guard should be used as it was in the civil war, and should not be called out for foreign service. The identity of each organization of the Guard should be preserved.

This calling out of the Guard to do the work which should have been done by the regulars, and by special volunteer organizations, caused great hardship, and has resulted in much temporary disorganization in the Guard itself. The work which the National Guardsmen ought normally to perform, differs entirely from that expected from regulars. All men who are admitted to the National Guard should be physically and morally fit for any soldierly duty; but there are many men who do invaluable service in the Guard who ought not to be called upon to serve in long campaigns, unless there is urgent need. For instance, a large number of our most useful Guardsmen who gladly give their service

to the State are men of small means, business men, mechanics, clerks and laborers, with families who are dependent upon their exertions. Ordinary service in the Guard does not interfere in the least with these men's work, and absence from their work for a few weeks to meet a special emergency does not cause any great hardship; but absence on a long campaign means the actual loss of the job, with delay in securing another after the return. This causes wide-spread suffering and hardship. It is right to ask them to perform a short term of duty, but not a long term; and the disinclination to enlist for a long term should not be held to in any way reflect on them. If the country needs the services even of men with families, then, whatever the individual suffering, the service should be freely given; but where the necessity can be met by enlisting some of the tens of thousands of young unmarried men who are eager to volunteer, it is a pity to employ men who can be ill spared. The Guard gave conclusive proof of its patriotism by the quickness with which it sought the chance to go to the war. New York has a right to be proud of the way in which her citizen soldiers sought opportunity to get to the front; and an equal meed of praise attaches to those who were fortunate enough to cross the seas, and to those equally devoted and equally patriotic, but less fortunate, soldiers to whom fell the harder task of waiting in camps on American soil through the weary months for the call to action which never came. The volunteers, the National Guardsmen, not only of New York, but of all the United States, have won by their ready response to the country's call the right to full justice, to full recognition of their services, by National and State government alike.

Many of the troops who volunteered gladly for the emergency, now that the war is over, are most anxious to return.

That they are not all of them able to return is due to the utterly inadequate size of our regular army. If our regular army is, as it should be, increased to one hundred thousand men, the hard necessity of retaining in the service the volunteer organizations which ought not be retained, will disappear.[6]

A very wise act of the last Legislature has, for the first time, put the organization of the Guard in this State on a proper footing. We now have a Major-General who is in fact, and not merely in name, the head of the National Guard. The Adjutant-General is to work in conjunction with him; he is not an independent officer, still less a superior officer. He can do no more than deliver the orders of the Governor and act as his representative. The Major-General has the power, and he should be given every possible facility for the exercise of this power. If he fails to do his duty, or fails to bring the Guard up to the proper pitch of efficiency, he should be removed and another put in his place; but so long as he is in office he must be given a free hand. In other words, he must be given full power, so that the responsibility can be settled upon him, and then he should be held responsible for the exercise of this power and responsibility.

I call your especial attention to the arms of the Guard.

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[6] Chapter 654, approved May 25, declared that "all employees of the State or of a State department who enlisted as volunteers in the United States service during the war with Spain, who did not receive their pay as State employees during their absence from their places of employment," were entitled to pay as public employees, from the time of their enlistment until their honorable discharge from the service of the United States, and appropriated $20,000 for the compensation of such employees.

Chapter 653, approved May 25, contained a similar provision relative to the city of Buffalo, and authorized the payment of city employees for the time they were engaged in the military or naval service of the United States during the war with Spain.

Like provision for New York City employes was made by L. 1900, chap. 644.

The lamentable result of keeping the Guard armed with archaic weapons, utterly unfit for modern warfare, was shown very conclusively in the late contest with Spain. It is an under-statement of the case to say that a single first-class regiment, armed with the Krag-Jorgenson, is worth three regiments armed with a low power, single shot, black powder piece like the Springfield. The National Guard should be armed with a small calibre, high power rifle, preferably that used by the regular army. In any event the cartridge should be the same. The last point is of the utmost importance. All the fighting forces of this country should use the same cartridge. It is a great mistake for the army and navy to use different rifles, but it is an even greater mistake for the army and the National Guard to use different rifles. The Springfield musket as a modern arm has two drawbacks. First, owing to the limited range, it is of small value against a foe armed with high power, repeating rifles. Second, owing to the black powder, it is a source of utmost danger to whoever uses it, as the smoke that it makes serves as a target, and the body of men using it immediately become the object of all the hostile fire from every part of the field within range. This was shown not merely by the experience of the National Guard in Cuba, but by the experience of the regular artillery, which also had black powder weapons, and which suffered in consequence exactly as the Guard did. It has been proposed as a remedy to supply smokeless powder for the present weapon. It is doubtful whether or not this could be done, but if done it would merely render the weapon less dangerous to the user without rendering it much more formidable to the foe. Any such half measure would be a failure. Our National Guardsmen are entitled to the best type of weapon. In a riot they could probably do the best work with shot-

guns; but we must have rifles, and these rifles should be of the highest type, and should take the same cartridge that is used by the United States regular troops.[7]

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[7] See *ante*, vol. 9, p. 634, for a sketch of the movement for a change of the arms used by the National Guard and its result, including the statutes, State and federal, under which in 1897 the National Guard received from the United States Springfield rifles in exchange for the guns then in use. Since that time considerable important legislation has been enacted, relating in part to the National Guard as a part of the federal military establishment, and in part to a permanent policy concerning the equipment of the National Guard under the supervision and at the expense of the United States.

The New York Constitution of 1894, article 11, section 3, divides the militia into active and reserve forces, and requires the militia force to be maintained at not less than 10,000 men. The Constitution limits the militia primarily to citizens between the ages of 18 and 45 years, but the Legislature is authorized to "provide for the enlistment into the active force of such other persons as may make application to be so enlisted."

The Military Code of 1898, chapter 212, described the active militia as "the organized and uniformed military forces known as the National Guard, and the organized and uniformed naval forces known as the naval militia." The reserve militia was described as "all those liable to service in the militia, but not serving in the national guard, or in the naval militia." The act provided that an "able-bodied man of good character, who can read and write and who is a citizen of the United States, or has declared his intention to become such, may be enlisted in the National Guard and Naval militia."

An act of Congress passed January 21, 1903, entitled "An act to promote the efficiency of the militia, and for other purposes," was an important revision of federal legislation relative to the militia. It declared that the "militia shall consist of every able-bodied male citizen of the respective States, territories and the District of Columbia, and every able-bodied male of foreign birth who has declared his intention to become a citizen," of military age (between 18 and 45 years), and was divided into two classes, namely, the organized militia, under the name of the National Guard or other local designation, and the remainder were to be known as the reserve militia. The act exempted a large number of federal officers and employees, and also all persons who were entitled to exemption under local laws. The local militia were to be subject to the same organization, armament and discipline as the regular or volunteer army of the United States. The local militia was liable to be called into service by the President in certain prescribed emergencies, for a period not exceeding nine months. The act

The regimental hospital corps should be kept up, and encouraged. The war with Spain has demonstrated the necessity of the regimental hospital.

The Red Cross, and kindred organizations, have done admirable work for our soldiers during the summer just past. The Red Cross Society should be the right hand of the medical department of the army, in peace and war; for even the best medical department will always need volunteer aid in the case either of battles or of camp epidemics. In America the Red Cross should have a federal organization, with, in every State, chapters which should be in close touch

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provided for the appointment of an adjutant general in each State and territory and District of Columbia, who was to be subject to local laws and regulations, and make reports to the Secretary of War.

The act authorized the Secretary of War to issue to the organized militia "United States standard service magazine arms with bayonets, bayonet scabbards, gun slings, belts, and such other necessary accoutrements and equipments as are required for the army of the United States;" which supply of arms and accoutrements was to be without local expense, and in exchange for corresponding arms, accoutrements and ammunition then used by local organized militia. The arms and other supplies so furnished were to remain the property of the United States. The act appropriated funds for the purpose of supplying arms, equipments and accoutrements to local organized militia, and making the required exchanges. The act required federal inspection of local organized militia at least once in each year, and provided for camp service and instruction. Provision was also made for instruction of local militia officers in United States military schools and colleges. The federal pension laws were made applicable to persons in the local organized militia, and to their families. The act contained numerous provisions relative to the organization, discipline, service, compensation and supervision of the militia.

According to the Adjutant General's report, transmitted to the Legislature of 1905, covering the year 1904, the State received for use by the National Guard a supply of United States magazine rifles (Krag-Jorgensen rifle modified), with accompanying equipments.

In 1905 an act was passed, chapter 11, containing provisions relative to furnishing equipments for the national guard similar to those used by the regular army. The statute was based in part upon the foregoing act of Congress of 1903.

Congressional legislation with regulations prescribed by the war department relative to militia organization, supervision and equipment may be found in the Adjutant General's report transmitted to the Legislature of 1904, Assembly Document No. 10, covering the year 1903.

with the National Guard, attending the encampments and forming schools of instruction in military methods. We should then have in this State, for instance, "The Red Cross of the National Guard of New York;" which should be recognized by the National Government.

THE NAVAL MILITIA.

The Naval Militia did admirable work in the late war, justifying their existence as completely as the National Guard did. The New York Naval Militia furnished practically the entire crew, and all but two of the highest officers, on board of the war ship "Yankee." They were fortunate in having in the person of Commander Brownson one of the most gallant and efficient captains in the United States Navy; and they did their duty in first class style. It would be difficult to parallel in the history of other naval nations what was done in this war by those naval militia organizations which, in addition to helping, provide for our coast defense, actually furnished the entire crews of four large warships, thereby supplying a pressing need, due to the inadequate size of our splendid regular navy. The State should carefully preserve and build up this arm of the service. It must be remembered, however, that it is exactly what its name shows, namely, a Naval Militia, and not a Naval Reserve. It was called upon in the late war to do duty which should ordinarily be done by the regular navy, or by a proper naval reserve, one composed of sea-faring men similar in type to those who actually man our warships. The Naval Militia ought normally to be used for coast defence purposes. In a war with a more formidable power than Spain it would be highly undesirable to put any part of our naval force to the use for which it is not best fitted, though it may always be necessary to do this if we do not greatly enlarge our regular navy, so that in number of ships and men it may more nearly than at present correspond to the greatness and the needs of the nation. Our

Naval Militia should be kept up and built up, but it is to be earnestly hoped that they will be supplemented by a naval reserve proper, called into being by the action of the Federal Government.

THE CIVIL SERVICE.

The methods of appointment to the civil service of the State are now in utter confusion, no less than three systems being in effect — one in the city of New York, one in other cities, and one in the State at large. I recommend that a law be passed introducing one uniform practice for the entire State, and providing, as required by the Constitution,[b] for the enforcement of proper civil service regulations in the State and its sub-divisions. This law should be modeled in its essential provisions upon the old civil service law which was repealed by the civil service law now upon the statute books. The inquiries I have made have satisfied me that the present law works badly from every standpoint, and the half mark given upon the so-called fitness test represents not a competitive examination at all, but the individual preference of the appointing officer, or rather of the outsider who has requested the appointment. It would be much better to have it stated outright that this was the case and that the examination was merely a pass or non-competitive examination, instead of going through the farce of a nominally competitive examination which is not such in reality. Where there is a large list of eligibles, as is the case now on some registers, it is practically impossible for the appointing officer to examine the whole list, and if he tried, it would merely result in a great loss of time to him, and a loss of both time and money to the unfortunate candidates. For the head of a department to try to examine at Albany a list of three hundred applicants for a $1,000 clerkship, these applicants coming from all over the State, would mean, if they all came, an expendi-

[b] Const. 1894, art. 5, § 9.

ture of about $3,000 by them, and the loss of several days by the appointing power. Practically, in the great majority of cases, only the applicants from the neighborhood of Albany come, and in most cases the appointing officer has made up his mind before he examines a man; so that the result is in effect to work a fraud upon men who enter the examination trusting to their own merits and not to favoritism. Where competitive examinations are to be held, they should be competitive in fact and not in name only. Where it appears after trial, or after careful investigation, that competitive examinations will not work well, then the places should be exempted from examination, or pass examinations substituted, the reasons for excepting them being set forth in full. I do not make a fetish of written competitive examinations for admission to the civil service. There are situations where these written competitive examinations are not applicable at all. There are others where they can be used simply as makeshifts; that is, as being better than a system of appointment through political favoritism, but as being very far from perfect, and not as good as if the appointments were made by an unhampered official trying to get the best man without regard to political considerations. Physical examinations, and technical examinations into the capacity of the man to do the work sought, should, wherever advisable, be used to supplement or even to supplant the written examination proper, and this written examination itself should be of as practical a type as possible, and directed to the special needs of the position sought. There is no need of discussing the advantages of the methods which we have grown to group together when we speak of Civil Service Reform. They have by long experience been proved to work admirably. In the postal service, for instance, the examinations for clerks, letter carriers and railway mail clerks, are entirely practical, and the application of the reformed system to the postal service has produced a very great improvement

in the character of the work done. In the navy yards of the nation the benefit resultant upon taking the appointment and retention of navy yard employees out of the hands of local politicians and making them consequent upon fitness and good conduct only has resulted in an incredible improvement, not only in the character of the work done, but in saving of expense to the Government. Our present navy would not have been able to do its duty in the war with Spain in the way that it actually did, had the Government service in the navy yard not been put upon a merit basis. What has succeeded in these great branches of the national service will surely succeed in the State service if given a proper trial. Let the clerks, stenographers and the like be appointed as the result of written competitive examinations. Let other employees be appointed after written competitive examinations where possible, and where it is not possible, then let the places be subject to other kinds of competitive examinations, or of non-competitive examinations, or be excepted from examination, in accordance with the actual needs of the service.

The veteran of the Civil War should be legally guaranteed preference in appointment to, and in retention in, office; that is, he should be appointed to any vacancy when he can show his fitness to fill it, and he should not be removed without trial by the appointing officer, at which he can make his defence. There is no intention to condone corruption or pass over inefficiency in a veteran; but, if he is honest and efficient, he is entitled to preference.[8]

[8] The civil service statutes were revised and consolidated, with new and enlarged provisions, by chapter 370, passed April 19, which was intended to establish a comprehensive civil service system, applicable primarily to the State and to cities, but the State Civil Service Commission was authorized to apply it to other civil divisions. This act was sustained in Stutzbach v. Coler (1901), 168 N. Y. 416; § 13 (civil service appointments) was held unconstitutional in People ex rel. Balcom v. Mosher (1900), 163 N. Y. 32. Section 21 (removals) was sustained in Matter of Seeley v. Stevens (1907), 190 N. Y. 158, where it was held that a veteran, holding the position of superintendent of repairs on the canals, could not be removed without charges and a hearing.

OVER-LEGISLATION AND BIENNIAL SESSIONS.

I invite the attention of the Legislature particularly to the evils of over-legislation. The tendency to pass laws which are utterly unnecessary, even when not pernicious or which are enacted purely to favor certain special private interests, seems to grow instead of diminish. It is difficult to devise an efficient check for it, but strenuous efforts should be made to find out and put into operation some such check. The State suffers very much more from over-legislation than it does from lack of legislation. One partial remedy for the evil would be to amend the Constitution so as to provide for biennial sessions of the Legislature. The Legislature has already passed this proposed amendment once. I recommend that it be passed again this year, in order that it may be submitted to the people next fall. I also advise that an investigation be made of the methods employed in other representative bodies for getting rid of the evil. I direct your attention to the custom of the British Parliament, which puts upon the would-be beneficiary the cost of all private and special legislation, and wisely makes it difficult to obtain at all, and impossible to obtain without full advertisement and discussion. No special law should be passed where passing a general law will serve the purpose.[9]

SCHOOL SUFFRAGE.

I call the attention of the Legislature to the desirability of gradually extending the sphere in which the suffrage can be exercised by women.

GOOD ROADS.

The Legislature should see that the excellent movement to better our roads is continued, and that it is conducted

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[9] Resolutions amending the Constitution by providing for biennial sessions of the Legislature were introduced again at this session, but were not adopted by both houses.

primarily in the interests of the farmers and market gardeners.[10]

THE FORESTS OF THE STATE.

The Forest Reserve will be a monument to the wisdom of its founders. It is very important that in acquiring additional land we should not forget that it is even more necessary to preserve what we have already acquired and to protect it, not only against the depredations of man, but against the most serious of all enemies to forests — fire. One or two really great forest fires might do damage which could not be repaired for a generation. The laws for the protection of the game and fish of the wilderness seem to be working well, but they should be more rigidly enforced.[11]

ECONOMY.

Every effort should be made to reduce the expenses of the State Government. Appropriations should be itemized and not, save in rare cases, made in lump sums. All needless offices should be abolished. For instance the Attorney-General's office should do the work now done by the special counsel for the different hospitals for the insane; and these special counsel should be abolished. Wherever possible commissions should be consolidated and the number of commissioners and of their employees reduced. In the State's charitable work, which is now very expensive, especially as regards the care of the insane, care should be taken not needlessly to multiply institutions nor to erect buildings more costly than is absolutely necessary, and the salary list should be kept down. The economical and efficient administration of these institutions is interfered with by the custom which has grown up of treating each as if it existed for the benefit of the locality in which it exists, whereas of course this is an utterly improper view, as the administra-

[10] As to good roads, see 1890, *ante*, vol. 8, p. 1041.

[11] Chapter 521, approved May 4, appropriated $50,000 for extending the forest preserve in the counties of Delaware, Greene, Sullivan and Ulster.

tion should always be simply in the interest of the State at large. Great improvement has resulted from putting the care of the insane under the control of the State instead of the counties.

UNIVERSITY OF THE STATE OF NEW YORK.

For more than a century New York has taken a leading position in fostering secondary and higher education. This work she accomplishes through the agency of her University. The growth of these interests has been specially marked since 1889. Within this decade, though the increase in attendance on our public elementary schools has been less than 20 per cent., there has been an increase of more than 100 per cent. in those completing requirements for admission to the high school and of more than 200 per cent. in high school graduates. By setting the standard for graduation from the elementary schools and by providing teachers for these schools the University has been a potent factor in improving the whole school system. In comparison with results attained and with other expenditures the State appropriations for high schools are small. In 1898 the State expended about $150 for each convict in her prisons and $185.31 for each lunatic in her asylums. The cost to the State of each student in her high schools was $4.45.

In the medical schools of New York are nearly one-fifth of all the medical students in the United States. In her law schools are fully one-quarter of all the law students. In other higher educational lines she is equally prominent. The standards for admission to the professions, which are recognized as the highest in the country, are determined by the University.

The reputation of the University has been increased by the valuable work of its museum, its paleontologist, botanist and entomologist. Important original research in these fields has added to the knowledge of the natural history and of the resources of the State.

The New York State Library, another department of the University, has more than doubled its efficiency within the past ten years and is an inspiration to intellectual life throughout the State. Through its local public libraries, its traveling libraries, its valuable photographic reproductions which are sent from school to school, and its other facilities for home education, it comes in direct contact with every class of the community.

The State owes loyal support to an organization which so guards and unites her most vital interests.

RAPID TRANSIT IN NEW YORK CITY.

I call the attention of the Legislature to the need of improved facilities for rapid transit in the city of New York. As the city extends the need for the establishment of an improved system of rapid transit becomes more and more imperative, and the Legislature should take every means to find out the best system to adopt.[12]

ECONOMY IN NEW YORK'S MUNICIPAL GOVERNMENT.

In New York city, even more than in the State, there is need of cutting down the salaries of certain officials, of forcing others to do more work, and of altogether getting rid of yet others. I suggest that you investigate carefully whether there is need to retain in existence such offices as those of the chamberlain of the city and the special commissioner of jurors;[13] whether the fees given to the sheriffs of the county of New York and of the county of Kings, and the county clerk and register of Kings should not be turned in to the counties, salaries being allowed the officials in

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[12] As to a rapid transit bill see the emergency certificate of April 25.

[13] The office of special commissioner of jurors was abolished in 1901, chapter 601, and an act was passed the same year, chapter 602, creating the office of commissioner of jurors in each county containing 1,000,000 inhabitants.

their stead;[14] and whether the judges of the municipal courts of the city should not be required to sit every day, so that working men who are the chief patrons of these courts, in such suits as those for the payment of wages, may not be compelled to lose day after day in attendance. Very many clerkships, inspectorships, and positions held by deputies, could be abolished. The evils of the police system in New York have become very serious; I may find it necessary to communicate with you again on this matter.

SUGGESTION REGARDING SMALL CITIES.

Of an interest and importance secondary only to that of the Greater New York are the cities of the second and third classes. Owing to their relative unimportance when taken singly, their needs have often been overlooked. While the condition of each of these cities differs from that of the others, all have substantially the same problems to solve, and the experience of each should be readily available for all. Practical students of municipal affairs, as represented by the city officials who form the League of American Municipalities and by the New York Senate committee on cities in the so-called Fassett Report, have urged as a matter of the greatest importance for good government in cities a uniform system of accounting. Foreign countries in which municipal government has been most successful have invariably provided some means to secure uniformity of accounting and a general interchange of information. The commissions on second and third class cities in 1896, recommended for this State an advisory board for cities of the second and third classes, and I venture to urge upon you the consideration of the establishment of an unsalaried State municipal board which shall have no coercive power in shaping the policy of any city, but which shall have for its duties the securing of uniformity of accounting systems

[14] The offices of county clerk, sheriff and register in Kings county were made salaried offices in 1901, by chapters 704, 705, and 706 respectively. These statutes were sustained in McGrath v. Grout (1902), 171 N. Y. 7.

in the cities of the second and third classes, the publishing of information regarding the work and conditions of these cities, besides also the duty of examining bills regarding them which are presented to the Legislature, and of making recommendations concerning legislative action upon them. Probably no other measure could be of so great assistance to these cities in the way of stimulating local pride and securing active local self-government.

SECRETARY OF STATE.

In the Secretary of State's office eight thousand corporation papers have been filed during the past year, including certificates of incorporation, of which four hundred and fourteen, exclusive of real estate corporations, are stock corporations. This increase in the volume of business transacted, necessarily means a corresponding increase of the sums turned into the State Treasury, for the organization tax on corporations. It is a curious fact that during the last fiscal year a large number of claims have been filed for gold and silver mines in this State.

COMPTROLLER.

The report of the Comptroller shows a very large increase in the revenue from indirect taxes during the last fiscal year. The amounts received from the organization and corporation tax for the fiscal year ending September 30, 1898, exceeded the amount received during the preceding fiscal year by the sum of $84,934.22. The amounts received from the tax on inheritances during the fiscal year ending September 30, 1898, exceeded the amount received during the preceding fiscal year by $167,268.41. The amounts received from the sale of liquors, under the Excise Law, exceeded the amount received during the preceding fiscal year by $212,922.71. These figures are of peculiar interest, because the amounts received represent a decrease in the burden of taxation upon those least able to contribute to the necessary revenues of the State.

STATE TREASURER.

Notwithstanding the extraordinary expenditures, necessarily incurred by reason of the recent war with Spain, a large balance, to wit: the sum of $3,973,804.45, still remained in the State Treasury at the end of the last fiscal year.

ATTORNEY-GENERAL.

The report of the Attorney-General shows the increased business conducted through his department. It is gratifying to note that claims against the State have been reduced by reason of judicious management.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

During the past year the sum of $29,515,935 has been expended for public schools under the jurisdiction of this department. Of this amount $4,027,615 was appropriated by the Legislature and the $25,488,320 was raised by local taxation. These large expenditures for public education show that the people of the State fully appreciate the importance of their public school system and do not hesitate to make liberal provision for its support.

The results of the Compulsory Attendance Law are surprising. The aggregate days attendance for the school year was fifty-six millions, or a gain of nearly two millions over the previous year, which, I am informed, can be almost directly shown to be the result of this law. It is suggested that, inasmuch as many of the statutes relating to public schools are conflicting and confusing, "The School Law" should be revised and simplified.[15]

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[15] A bill called the education law, prepared by the Statutory Revision Commission, was introduced at this session, but was not passed. It embraced the general revision of all the statutes relating to public education, including the University, the Department of Public Instruction, normal schools, libraries and other elements of the educational system of the State, all of which were to be included in one comprehensive statute.

The consolidation of the University and the Department of Public Instruction was effected by an act passed in 1904, chapter 40.

An education law passed in 1909, chap. 21, contained a consolidation of statutes relating to common schools and kindred subjects.

DEPARTMENT OF BANKS.

The report of the Superintendent of Banks shows an apparently healthy condition among our banks, savings banks, trust companies and other kindred institutions which are within the peculiar province of the Banking Department. The Legislature will note with pleasure that there has been a very large increase during the last fiscal year in the number of depositors and in the amounts deposited in our savings institutions. This shows that business has revived throughout the State and that thrift has correspondingly increased among our people.

SUPERINTENDENT OF STATE PRISONS.

Satisfactory results appear to have succeeded the enactment of the law, relating to the products of prison industries, which went into effect January 1, 1897.

During the past year the health of the convicts has been generally good and the death rate small; it would appear, however, that the condition of the cells in the several prisons, is a matter to which the attention of the Legislature should be directed. Auburn prison was built in 1817, Sing Sing, in 1825, and Clinton, although of later date, was built upon the same general plans as the other two, in relation to its cells. It would almost seem, that the time had come, when these cells should be renovated and placed in a more sanitary and healthful condition. This work could be done by the convicts, at small expense to the State for material.

RAILROAD COMMISSIONERS.

The work of the Board of Railroad Commissioners has more than doubled during the past year. The Legislature of eighteen hundred and ninety-eight appropriated the sum of one hundred thousand dollars, for the purpose of defraying the State's share of the expense for the abolition of those crossings at which steam railroads cross public high-

ways at grade. The importance of protecting the traveling public against accident at grade crossings, is shown by the fact, that during the year ending June 30, 1898, one hundred and two persons were killed and one hundred and thirteen injured, at such crossings. It would seem that an amount equal to that appropriated last year should be again appropriated this year.[16]

DEPARTMENT OF AGRICULTURE.

The work done by the Commissioner of Agriculture, in the matter of adulteration, shows that the enforcement of the provisions of law, relating to farm and dairy products, has greatly increased the volume and size of plants, and the aggregate value of productions. The beneficent result to the farmer of these laws is shown by the largely increased production of milk, and particularly of cheese, during the last year, an increase which is certainly in part due to wise legislation, although of course the chief credit must be given to the industry, energy and shrewd foresight of the farmers themselves.

Upwards of twenty-five per cent. of our population till the soil as a means of livelihood; and they form the foundation and mainstay of the commonwealth. They pay a large percentage of the taxes, in proportion to their means. Few of their numbers are found in penal or charitable institutions. They are intelligent, hard-working and deeply patriotic. They do not look for aid from the State to carry on their ordinary avocations. Indeed, it is doubtful if they would approve any special legislation in their favor; all they ask is protection against improper competition and improper legislation. It is within the province of the Legislature to see that the cost of transportation of farm and garden products is not excessive; that vitiated compounds

[16] Chapter 570, appropriated $100,000 for grade crossing purposes.

and adulterations be not permitted; and that those public servants especially charged with caring for the health of the State be provided with all necessary appliances to prevent the spread of disease among cattle, or among fruit, vegetables and cereals, and to inquire as to noxious insects, which so often overrun and destroy the results of the husbandman's labor. It is especially on their behalf that every effort should be made to reduce taxation and to secure the utmost economy in administration.[17]

THE EXCISE LAW.

The present excise law has proved to be the best revenue-raising law on the statute book. One of its gratifying features is the fact that, compared with the old law which it supplanted, it is administered by a very much smaller number of officials, while bringing in so much more revenue.

GENERAL.

The various heads of other departments, such as Public Works, Public Buildings, State Engineer, Surveyor, Fisheries, Forest and Game, State Board of Health, Civil Service Commission, State Tax Commission, Bureau of Labor Statistics, State Commission in Lunacy, State Hospitals for Insane, State Reformatories and other penal and eleemosynary institutions, will in due time make their several detailed reports to the Legislature, and I invite your careful attention to these reports, when they are received, to the end, that if defects are found in the systems of administration, there may be proper remedial legislation.

THEODORE ROOSEVELT.

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[17] Chapter 518, approved May 4, prohibited the manufacture, sale or exposure for sale of poisonous coloring matter for coloring food products, and also prohibited the use of such coloring matter.

SPECIAL MESSAGES.

January 12. To the Assembly: Transmitting the annual report of the State Superintendent of Elections for the Metropolitan Elections District, the Volunteer Life Saving Corps, the State Women's Relief Corps Home, the State Board of Pharmacy, the Commissioners of Quarantine and the Board of Commissioners of Pilots.

January 16. To the Assembly. Transmitting the annual report of the managers and superintendent of the New York State School for the Blind.

January 17. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 17, 1899.

I have the honor to transmit herewith for your consideration copies of a communication received by the Governor in July last, from the Honorable the Secretary of State of the United States, enclosing a claim of the Canadian branch of the Cayuga Indians against the State of New York for a portion of the annuity payable by the State to the Cayuga Indians under treaties with that nation. The claim is presented by the British Ambassador at Washington, on behalf of the Canadian government.

I also transmit copies of correspondence with Herbert P. Bissell, Esq., of Buffalo, who was appointed a commissioner under chapter 84 of the Laws of 1888 to examine the claim; and also copies of a memorandum relating to the claim prepared by executive counsel at the request of Governor Black.

It seems that by treaties made by this State with the Cayuga Indians in 1789 and 1795 the State agreed to pay the Indians an annuity of $23 and that payments were made in which the Canadian Indians shared until 1810, when the officers having charge of the payment of the annuity de-

clined to pay any part of it to the Indians residing in Canada.

It seems also that the Canadian Indians assisted Great Britain in the War of 1812, and after that was it was insisted by the officers of this State that the Indians had forfeited their right to the annuity in consequence of having fought on the side of Great Britain in that war. The Indians claim, however, that by the provisions of the treaty of peace their rights were restored and preserved and that they are entitled to the annuity notwithstanding any assistance they may have rendered to Great Britain in that war.

I am informed that the whole annuity has been regularly paid by the State to the Cayuga Indians supposed to be entitled thereto, but the Canadian Cayugas claim that they were and are entitled to their share, which they have not received. The question has been before the Legislature several times, and has also received the attention of our Supreme Court, and of different departments of the State government; but apparently no conclusive determination of the matter has ever been made.

From the facts before me the claim seems of doubtful validity, but it should, I think, receive a thorough examination and careful consideration, so that the result reached this time will be final.

THEODORE ROOSEVELT."

January 23. To the Legislature: Transmitting the annual report of the Cooper Union.

February 1. To the Assembly: Transmitting the annual report of the New York State College of Forestry at Cornell University, and the report of the New York State Veterinary College at Cornell University.

February 3. To the Assembly: Transmitting the annual report of pardons, reprieves and commutations.

February 14. To the Assembly: Transmitting the annual report of the State Board of Health.

February 27. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 27, 1899.

Pursuant to a concurrent resolution of the Senate and Assembly, I herewith return Senate bill No. 213, entitled 'An act to release to Michael Sullivan and Margaret Sullivan all the right, title and interest of the People of the State of New York in and to certain real estate in the borough (late city) of Brooklyn.'

This bill is recalled at my request because deemed unnecessary, as it appears that the Commissioners of the Land Office have authority to grant the relief sought, and I am informed they are ready to take the necessary action if an application be presented as required by the statute. I return this bill because it is the first of the kind that has come to me, but any similar unnecessary bills which come to me hereafter will be vetoed. It is most desirable to reduce the body of legislation. Frequently special laws are enacted to meet particular cases, where the relief sought could be obtained by the exercise of a little trouble under some general law, the aid of the legislature being invoked apparently because a legislative act is cheaper for the persons interested than are proceedings under the general law. No cast-iron rule can be laid down, but it is certainly of the utmost importance to make a serious effort to curtail the amount of this special legislation. It could be materially reduced if in the cases involving special legislation the Committees would defer action so as to bring up all cases of a like character together, and then prepare a general bill covering the whole subject.

THEODORE ROOSEVELT."

February 28. To the Legislature: Certifying to the necessity of the immediate passage of a bill relative to commissions of notaries public, which became chapter 41.

February 28. To the Assembly: Transmitting the report of the canal investigating commission appointed by the Governor, pursuant to chapter 15 of the laws of 1898.[18]

March 3. To the Legislature: Transmitting the annual report of the Civil Service Commission.

March 22. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 22, 1899.

I herewith transmit two documents from the Superintendent of Public Instruction in relation to the condition of the public schools of Rochester, which set forth a condition so serious that in my judgment it calls for immediate legislative action. These documents describe the public schools of Rochester as being in a shape which must be designated as appalling, because of the imminent danger to the health of the children and their exposure to wholesale destruction in the event of fire; and this aside from the fact that the facilities are so utterly inadequate that three thousand children are left wholly unprovided for. The local authorities have power to remedy this condition of affairs; but they refuse to act. Yet no such condition of affairs can with any propriety be allowed to exist, if a remedy can be found.

Accordingly I lay the matter before the Legislature with the hope that it will take immediate action to provide relief.[19]

THEODORE ROOSEVELT."

March 23. To the Assembly: Transmitting the report of the New York State Commissioners to the Trans-Mississippi and International Exposition.

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[18] As to the canal investigating commission, see 1898, note 11, *ante*, vol. 9, p. 849; also 1900, note 1, *post*, p. 75.

[19] Chapter 366, passed April 18, required the common council of Rochester to raise $100,000 for the purchase of sites and the erection of new school buildings, which were to be erected according to plans and specifications to be prepared by the board of education.

March 27. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 27, 1899.

The tax laws of this State are in an exceedingly unsatisfactory condition, and I do not see how they can be put upon a just and wise basis save, after careful investigation, by legislative action. At present the farmers, the market gardeners, and the mechanics and tradesmen having small holdings, are paying an improper and excessive portion of the general taxes, while at the same time many of the efforts to remedy this state of affairs, notably in the direction of taxing securities, are not only unwise, but inefficient, and often serve merely to put a premium upon dishonesty. It would not be well to make any class of our citizens feel immunity from paying taxes, for this would almost certainly result in extravagant expenditure both in the State and in the municipalities; against which the surest safeguard is the immediate pressure on the purses of the citizens. But though complete immunity from taxation by the people at large is not desirable, the fact remains that at present taxation is excessive and badly distributed.

There is evident injustice in the light taxation of corporations. I have not the slightest sympathy with the outcry against corporations as such, or against prosperous men of business. Most of the great material works by which the entire country benefits, have been due to the action of individual men, or of aggregates of men, who made money for themselves by doing that which was in the interest of the people as a whole. From an armor plant to a street railway no work which is really beneficial to the public can be performed to the best advantage of the public save by men of such business capacity that they will not do the work unless they themselves receive ample reward for doing it. The effort to deprive them of an ample reward, merely means that they will turn their energies in some other direc-

tion; and the public will be by just so much the loser. Moreover to tax corporations or men of means in such a way as to drive them out of the State works great damage to the State. To drive out of a community the men of means and the men who take the lead in business enterprises, would probably entail, as one of its first results, the starvation of a considerable portion of the remainder of the population.

But while I freely admit all this, it yet remains true that a corporation which derives its powers from the State, should pay to the State a just percentage of its earnings as a return for the privileges it enjoys. This should be especially true for the franchises bestowed upon gas companies, street railroads and the like. The question of the municipal ownership of these franchises cannot be raised with propriety until the governments of all municipalities show greater wisdom and virtue than has been recently shown, for instance, in New York city; and the question of laying and assessing the tax for franchises of every kind throughout the State should in my opinion be determined by the State itself. I need not point out to you that in foreign communities a very large percentage of the taxes comes from corporations which use the public domain for pipes, tracks and the like. Whether these franchises should be taxed as realty, or whether it would be wiser to provide that, after the gross earnings equal, say, ten per cent. of the actual original cost, then five per cent. of all the gross earnings over and above this shall be paid into the City Treasury; or whether some yet different plan should be tried, can only be settled after careful examination of the whole subject. One thing is certain, that the franchises should in some form yield a moneyed return to the government. To put on a tax here and there as new franchises are asked for may be advisable, but of course is inequitable, to the extent that it handicaps the few thus taxed in their competition with the untaxed corporations; and it may be that now and

then some franchise to perform an especially needful and risky service should not be thus handicapped at all. It is far better to have a general scheme of taxation, one that shall apply, for instance, to railroads entering New York city, to railroads operating within the city, to gas companies, electric companies and the like.

Many commissions have been created by legislative enactment in this and other States in the past, and it has been the almost universal experience that however excellent the reports of such commissions might be, if they were made up of men outside the Legislature, the Legislature paid little or no heed to them. I therefore recommend that you create a Joint Committee of the Senate and Assembly, to investigate the subject in full, and to report to the next Legislature a proper scheme of taxation. (See note 1.)

THEODORE ROOSEVELT."

March 27. To the Assembly:

Veto of a bill entitled "An act in relation to the wearing of gowns or other habits by the attorneys and counselors at law of the Supreme Court of the State."

"This bill is obviously and utterly unnecessary. The whole subject should be left and can safely be left where it properly belongs — to the good sense of the judiciary."

The bill was not passed over the veto.

March 29. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

April 3. To the Assembly:

Veto of a bill entitled "An act to amend Chap. 415 of the Laws of 1897, entitled 'An act in relation to Labor,' constituting Chap. 32 of the General Laws, and the several acts amendatory thereof and supplemental thereto."

"This bill relates to the same subject as Assembly bill No. 1163, introduced by Mr. Costello, entitled 'An act to amend

the Labor Law relating to licenses for the manufacture of certain articles in tenements,' (which is now Chap. 191 of the Laws of 1899), both bills coming to me at the same time. The Costello bill, however, is a carefully thought out and most important piece of remedial and constructive legislation. It embraces other subjects not included in the Sullivan bill, and it also remodels, in far more effective form, the two sections of the old act which this bill attempts to remodel. To sign this bill, now that the Costello bill has become a law, would mean an act of positive retrogression in the effort to abolish sweatshops; and if signed before the Costello bill became a law its provisions would, of course, have been superseded by those of the latter. The Costello bill does not go as far as I should like to see it go, but it does take an enormous stride in advance, representing the first really effective bit of legislation against the sweatshops which has been enacted in this State; it is in line with and to a large extent carries out one of the suggestions in my message to the Legislature upon which I dwelt with particular emphasis. The same may be said of the other bill introduced by Mr. Costello, Assembly bill No. 1615, entitled 'An Act to amend the labor law, relating to the duties of the factory inspector and the enforcement of the provisions of such law,' which has just become a law and is Chap. 192 of the Laws of the State of New York. This carries out another of the suggestions contained in my message and marks a great advance in the effort to make effective the enforcement of the factory inspection law.

The particular bill under consideration, however, though doubtless well-intentioned, would have accomplished little or nothing even had neither of the other laws been passed; and if enacted into law now it would, as I have already said, be an act of retrogression (aside from the question of its possible unconstitutionality, which I need not now discuss). On no subject is it more important to have wise and sound

legislation than where the interests of labor are concerned. When such legislation is good, it probably accomplishes more real benefit to the community than can be accomplished by any other kind of law, but crude and hasty labor legislation either wholly fails to accomplish anything — being so drawn as to be ineffective — or else works harm instead of good to the very people supposed to be benefited. In the two Costello bills, the Legislature has put through measures which are certain to accomplish good of the most far-reaching kind and which mark a long stride forward in our treatment of labor questions — although I have little doubt as regards the sweatshop bill that it will have to be amended in the line of rendering it more stringent and more certain of enforcement. But the present bill comes under the category of measures which are loosely drawn and are pushed without serious consideration of the objects sought to be attained. Had such a serious consideration been given the subject the futility of passing a measure which in part nullified the Costello bill, at the very time the Costello bill was on its passage, would have been evident. (See note 4.)"

The bill was not passed over the veto.

April 10. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 7, 1899.

I herewith transmit a copy of a letter received by me from Messrs. Fox and Macfarlane, whom I appointed as counsel to take up the matter of the charges in reference to the canal contracts under the Acts of 1895 and 1896. I earnestly request your careful consideration of this letter and immediate action upon it. It is obviously in the interest of the administration of justice that funds be immediately made available to enable the counsel to carry out the work which they were appointed to perform. Delay in fur-

nishing them the means so to proceed may result in guilty parties being protected by the statute of limitations. It is equally obvious that only by enabling counsel to find out the exact facts is it possible to settle whether or not indictments should be found against any persons connected with the canals. There can be nothing more important to the State than the punishment of any man contractor or public official, who has done wrong, on the one hand, or on the other, than the clearing of any man who has been wrongfully suspected. And the only method by which either of these results can be reached is by providing funds sufficient to enable the counsel to prosecute to a conclusion the work on which they are now engaged.

I therefore call your attention to the urgency and importance of the matter.[20]

THEODORE ROOSEVELT."

The following is the letter referred to in the Governor's message:

Hon. THEODORE ROOSEVELT, Governor of the State of New York, Albany, N. Y.

SIR.—In reply to your request to be informed what progress we have made in examining the testimony taken by the Canal Investigating Commission and reported by them to your predecessor in office, with a view to advising you whether or not criminal prosecutions should be instituted against any of the persons involved, we beg to report that we have, during the two months which have elapsed since we were appointed, carefully read the voluminous testi-

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[20] Chapter 495, approved May 2, appropriated $20,000 for the services, expenses and disbursements of Austen G. Fox and Wallace Macfarlane as special counsel to investigate canal contracts under the $9,000,000 act of 1895, chapter 79.

As to the canal investigating commission, see 1898, note 11, *ante*, vol. 9, p. 849. For a report of the result of the Fox and Macfarlane inquiry, see 1900, note 2, *post*, p. 78.

mony taken by the Commission and their report, besides the report of Judge Countryman and the statements published by the former State Engineer and Surveyor, Mr. Adams, and the former Superintendent of Public Works, Mr. Aldridge. We have also examined a large number of exhibits and documents relating to these transactions in the offices of the Comptroller and State Engineer.

In the testimony taken by the Commission are disclosed and partially examined many transactions which are suggestive of wrong-doing by the parties engaged in them and which we think should be more carefully examined.

The purposes for which the Commission were appointed did not require that exhaustive and precise examination of witnesses with reference to particular transactions which should in our judgment precede criminal prosecutions. We must make the examination now if our work is to continue. Most of the witnesses, assistant engineers, inspectors and others employed by the State on the canal contracts under the Acts of 1895 and 1896 are no longer employed by the State. The addresses of most of them, however, are known and they can in all probability be found. Before bringing together a grand jury for the purpose of considering charges against anybody connected with the award and performance of contracts for improving the canal under the Acts of 1895 and 1896, we consider it essential to find these witnesses, and obtain from them statements of their knowledge of the transactions which we have selected for examination. This will require the expenditure of considerable sums for travelling expenses of witnesses and counsel, for stenographers' fees and other ordinary disbursements of preparing a case. Until we shall have seen and talked with these witnesses, we shall be unable to determine whether or not a grand jury should be called upon to consider specific charges against anybody involved.

We have selected a number of specific transactions mentioned in the proceedings of the Commission upon which

to concentrate our work, and if supplied with the funds necessary to prosecute the inquiry, we hope to be able within *a few weeks* to advise you definitely whether or not we think any cases should be presented to a grand jury. Any appropriation that is to be made for the purposes indicated in this letter should be made without delay. The statute of limitations against misdemeanors, such as wilful neglect of duty, or wilful omission to perform it, by a public officer, or wilful disobedience of statutory prohibitions, is two years, and many of the most important and most criticised of the canal contracts under the Acts of 1895 and 1896 were let much more than two years ago.

Very respectfully yours,

AUSTEN G. FOX,
WALLACE MACFARLANE.

Dated April 7, 1899.

April 13. To the Legislature: Certifying to the necessity of the immediate passage of a bill relating to the civil service, which became chapter 370.

April 21. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 21, 1899.

In compliance with a resolution of the Senate, adopted April 17, 1899, I have the honor to transmit herewith copies of communications on file in this office relating to William Church Osborn whom I have heretofore nominated as a State Commissioner in Lunacy.

THEODORE ROOSEVELT."

Enclosures: Letters from Joseph H. Choate, Homer Folks, Dr. P. M. Wise, Mrs. Gertrude S. Rice, James Byrne. Also a letter from the State Charities Aid Association signed by the following managers: Gertrude S. Rice, Vice

President Charles S. Fairchild, Charles H. Marshall, C. Schurz, C. Elizabeth Oothout, Helen C. Butler, John A. McKim, George G. Wheelock, George F. Canfield, Charles F. Chandler. Also telegrams from Miss Louisa Lee Schuyler.

April 22. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 21, 1899.

There is now before your body a measure looking toward the securing of rapid transit for the city of New York. I deem it of very great importance that a scheme providing for rapid transit in the city should be passed at the earliest practicable moment. But it is even more important that this scheme should be one which will work for the ultimate benefit of the city. It does not seem to me wise that a franchise of this nature should be given in perpetuity. It would of course be best to have it owned by the municipality; although I would point out to the advocates of municipal ownership that it is doubly incumbent upon them to take the most efficient means of rebuking municipal corruption and of insisting upon a high standard of continuous fidelity to duty among municipal employees. Only if the government of the municipality is honest will it be possible ever to justify fully the workings of municipal ownership.

While, however, giving full weight to these considerations, it yet seems unquestionable that if this measure can be undertaken by the municipality, it should be so undertaken. But if the measure must be undertaken by a private company, then the bill should be so framed as to throw open the competition to all responsible bidders, and the franchise should not in my opinion be given for more than fifty years, then to be revalued by arbitrators or by the Supreme Court; the franchise to be thereafter continued for terms of twenty-five years, unless the city desires to take the road at the valuation agreed on.

We are most fortunate in having as commissioners under the present rapid transit act, men of the highest character and standing, in whose judgment the city has the utmost confidence. I believe that it is safe to give these commissioners a very large liberty in dealing with the rapid transit plan. Nevertheless in my judgment certain broad lines should be laid down within which they are to work. What the value of this franchise may be fifty years hence, no one can tell; and while, in view of the formidable difficulties of the undertaking, full provision should be made for ample reward to the private capitalists who go into the scheme, if it is deemed advisable to have it undertaken by private capital, yet the franchise should not be given in perpetuity, and provision should be made to remunerate the city if the franchise turns out to possess exceptional value. [See note 12.]

THEODORE ROOSEVELT."

April 25. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill, which became chapter 569.

April 25. To the Assembly:

Veto of a bill entitled "An act to amend chapter 557 of the laws of 1894, entitled 'An act to provide for a commissioner of jurors in counties containing cities of from ninety to ninety-six thousand inhabitants,' in relation to the commissioner of jurors of Albany County."

" This is a bill, unfortunately not of an unusual type. It is a piece of special legislation very thinly disguised as general legislation. It amends a general act which applied only to Albany and Rensselaer Counties so as to make the old act apply only to Rensselaer County and the new act only to Albany. It very nearly doubles the salary of the man now in office, and makes a change in the appointing power. It is questionable whether the courts would decide

the act to be constitutional. In any event, its constitutionality would have to be tested in the courts. It is clearly and purposely drawn so that if it does not violate, it evades, the constitutional requirements. If there were a great public policy to be served, I might, though reluctantly, sign the bill, and run the risk of having it declared unconstitutional; but there is no sufficient reason for enacting the law in its present shape. The end sought can be reached quite as well, if the circumstances warrant it, by including Albany and Rensselaer with other counties in the general law."[21]

The bill was not passed over the veto.

April 25. To the Legislature: Certifying to the necessity of the immediate passage of the rapid transit bill. The bill was passed, but was not approved. It was included in the omnibus veto of thirty day bills.

April 26. To the Legislature: Certifying to the necessity of the immediate passage of a bill relating to elections, which became chapter 630.

April 27. To the Legislature: Certifying to the necessity of the immediate passage of a bill establishing a separate department of elections in New York City. The bill was passed, but was not approved. It was included in the omnibus veto of thirty day bills.

April 27. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the primary election law, which became chapter 473.

April 27. To the Legislature: Certifying to the necessity of the immediate passage of a bill to tax public franchises as real property. The bill was passed, but was not approved. Pending its consideration by the Governor an extraordinary session of the Legislature was called to consider the subject of the taxation of franchises. This ex-

[21] A general act creating the office of commissioner of jurors was passed at this session, 1899, chapter 441, but it excepted the county of Albany and several other counties. This act was extended to Albany county by L. 1900, chapter 320.

traordinary session was held during the thirty day period, and a new franchise tax bill was passed, which became chapter 712. The bill referred to in the foregoing certificate was therefore not approved, but was included in the omnibus veto.[22]

April 27. To the Legislature: Certifying to the necessity of the immediate passage of a bill relating to cities of the second class, which became chapter 581.

April 27. To the Assembly: Transmitting the report of the Health Officer of the Port of New York.

April 27. To the Assembly:

Veto of a bill to amend the Greater New York charter relative to the legislative department.

"This bill purports to be an amendment of a section. In reality it is a repeal of a section. The framers of the New York Charter very wisely applied to members of the Municipal Assembly the same rule made applicable by the Constitution of the State (Sec. 7, Art. III) to members of the State Legislature, by prohibiting them during the term for which they were elected from being eligible for appointment to any other office under the city. It also prohibits them from being contractors with or an employee of the city. The present bill nullifies this provision by adding a clause which permits any member of the Municipal Assembly to avoid the provisions of the section by simply resigning membership in the said Assembly. All the considerations which made it wise to enact the original section make it unwise now to nullify it by this amendment."

The bill was not passed over the veto.

22As to the franchise tax bill, see the special message of April 28 to the Assembly, and also the proceedings of the extraordinary session of the Legislature, which opened on the 22d of May, *post*, pp. 64–74.

April 28. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill, which became chapter 569. Second certificate.

April 28. To the Legislature: Certifying to the necessity of the immediate passage of a bill relating to offensive trades in Brooklyn. The bill was passed but was not approved. It was included in the omnibus veto of thirty day bills.

April 28. To the Legislature: Certifying to the necessity of the immediate passage of the supplemental supply bill, which became chapter 572.

April 28. To the Legislature: Certifying to the necessity of the immediate passage of the tax rate bill, which became chapter 571.

April 28. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 28, 1899.

I learn that the emergency message which I sent last evening to the Assembly on behalf of the Franchise Tax Bill has not been read. I therefore send hereby another message upon the subject. I need not press upon the Assembly the need of passing this bill at once. It has been passed by an overwhelming vote through the Senate. A large majority of the Assembly have signed a petition asking that it be put through. It establishes the principle that hereafter corporations holding franchises from the public shall pay their just share of the public burden. It is too late to try to amend or perfect the bill, even should such amendment or improvement be deemed desirable. It is one of the most important measures (I am tempted to say the most important measure) that has been before the Legislature this year. I cannot too strongly urge its immediate passage. [See notes 22 and 23.]

THEODORE ROOSEVELT."

April 28. The Legislature adjourned without day.

THIRTY DAY BILLS.

May 12.

Memorandum filed with Assembly bill, chapter 567, regulating the hours of labor:

"This bill carries out the recommendation made in my message to the Legislature that the eight-hour law should be so amended as to make it effective. It will work on the whole an undoubted improvement, but unfortunately it is so drawn as to emphasize instead of eliminating two or three of the defects in the old law. The need of the passage of this law is evident. There is at present and has long been on the statute books an eight-hour law, but it is so easy of evasion that it has been largely inoperative. It is always detrimental to the best interests of the State to have a law on the statute books which pretends to do something and does not do it, and this of course is especially the case where it is highly important that the nominal end sought to be attained really should be attained. The general tendency towards an eight-hour working day has undoubtedly been healthful, and it is wise for the State to set a good example as an employer of labor, both as to the number of hours of labor exacted and as to paying a just and reasonable wage. It is even more important to reach contractors who do the State work than to reach the public servants of the State proper. Cheapness secured by the employment of gangs of men under the padrone system is cheapness for which the State pays altogether too dearly, for it is obtained at the cost of the sacrifice of good citizenship. It is therefore just that the ordinary employee of the State and of contractors who do State work, should work for but eight hours and should receive a rate of wages not less than that paid for other labor of the same kind where the structure is to be put up, this not interfering with the purchase of a finished product.

The permission to work over time for additional compensation has resulted in such wide spread evasion and nullification of the purposes of the law, especially among contractors, that it is wise to take it away in most cases. Certain needed exceptions are provided for in the bill, but there are other exceptions which must be provided for by the next Legislature, if the bill is not to be a cause of needless expense to the State in various directions. There are some forms of labor where though the man is employed on and off for more than eight hours a day, his labor is not continuous. This is notably the case as regards lock tenders on the less frequented canals. Curiously enough the less work there is to do on the lock, the longer it is necessary to have the nominal hours for labor. One of the most thoroughly satisfactory lock tenders in the State is a woman, the widow of a former lock tender, whose house is by the lock. It is on a canal where work is not regular and days may pass where all told she may not work more than an hour or two a day. Then will come a day or two when owing to the accident of a number of boats passing she may work on and off, although not continuously, from light to light. It would of course be a great injustice to her to diminish her compensation by providing for a paid substitute to do her work, and it would be a great injustice to the State to pay such substitute in addition to paying her, when all told the aggregate of her work rarely requires her laboring eight hours all told and never requires her laboring for eight hours continuously. With a shoveler, a mechanic or any other employee who is employed for eight hours steadily, there is no difficulty; but both the law as it at present reads and the law as it will read after the signing of this bill, is not framed so that the case of a lock tender can be met under it, save on those parts of the canal where the work of a lock tender is practically continuous. Here the eight-hour law can be and shall be applied; but I shall hold under this bill, as it has been held in the past, that, in

the other places where the work is not continuous, intervals of rest continually intervening between the intervals of work, the aggregate of the time spent per day actually at work is to be included in the eight hours; in other words, that we shall not take an arbitrary stretch of eight hours, six of which the man may spend in idleness, and call them eight hours work.

Another class of cases comes under the Superintendent of Public Buildings, notably in the Capitol at Albany. These employees do not average eight hours a day throughout the year, because when the Legislature is not sitting their work is light; but when the Legislature is sitting they are obliged on the first four days of each week, to work for much more than eight hours. Ordinarily even in these cases the average for the week will not be more than eight hours a day, Friday and Saturday being days of light labor; and it never averages eight hours a day for the year. Obviously no just purpose can be served by taking a highly paid officer such as the Chief Engineer at the Capitol, who during most of the year may not be employed more than from four to six hours a day, and prohibiting him from seeing to the safety of the delicate engines under his care during the time when the Legislature and its committees are sitting in the afternoons and evenings. The same thing applies to the elevator men. This difficulty will not arise under the present bill until the first of January next, and I shall in my message to the Legislature request them at once to amend the law so that in the case of public servants who do not in the aggregate during their terms of employment work for more than eight hours a day on the average, they shall be permitted, where any emergency arises, to work for more than eight hours a day, provided always that this amount of extra work is in no case to be carried so far as to make the average per day for the term more than eight hours. The alternative to this would be putting a needless additional burden on the State or cutting

down the wages of the employees during the time they are not employed for eight hours a day. It may be that the actual working of the law during the next eight months will develop some additional defects. If so, they can be remedied by the next Legislature. Until it has actually been tried it is probably impossible to say whether or not any defects beyond those indicated above will be found. In any event it is highly desirable that the principle which this law seeks to establish should be really established and that the nominal purpose of the eight-hour law should be in fact fulfilled.

I accordingly sign the bill."

May 12.

Veto of an item in the supply bill, chapter 569:

"'For the Superintendent of Public Buildings for rearranging the lighting of the Senate Chamber, five thousand dollars or so much thereof as may be necessary, to be expended under the direction of the Capitol Commissioner and upon the request and with the approval of the finance committee of the Senate.'

I am informed that the amount appropriated is insufficient for the purpose indicated. The Superintendent of Public Buildings reports that it would take in the neighborhood of nine thousand dollars, and it is not in accordance with sound public policy to incur a deficiency in such a matter. I think the work should not be begun unless it can be completed."

May 27.

Veto of Assembly bill to regulate the sale of theatre tickets.

"It appears that this bill passed the Legislature on April 26th, but it did not reach the Executive Chamber until May 25th, and it was then impossible for me to take it up until May 27th, owing to the immense pressure of public busi-

ness. The bill seems to be right in principle, but it is so drawn as to affect not merely theatres but in all probability every form of public entertainment, such as Chautauquas, church fairs, and the like, whether great or small, and for which an admission price is charged. I am inclined to think that even as regards these it is right at least in principle; but it is wholly impossible now to consult the interests that would be affected so as to find out whether or not the bill would in its action work hardship to some of them. The bill is therefore not approved."

May 27.

Veto of Assembly bill, as to safety appliances for employees.

"This bill is so drawn as to make it questionable whether, under its provisions, all builders would not have to purchase a certain patented device.

This being the case, it is not desirable to sign it."

May 27.

Veto of Senate bill, authorizing the Albany Railway Company to build a bridge over the Hudson River.

"The Superintendent of Public Works emphatically protests against this bill. It is true that the bill provides that he shall first approve any plans that are submitted, but he states that as the bill is now drawn, it is not possible to erect the bridge as described in the bill and in the place described by the bill, without detriment to navigation, and that if the railroad company could have produced a plan which would have enabled them to meet his objections, they ought to have done it before this, having had ample time for the purpose. I appreciate the desirability of an additional bridge between Troy and Watervliet, but the interests of the canal cannot be sacrificed. If prior to the next session, plans can be submitted to the Superintendent of Public Works which will convince him of the feasibility,

both as regards kind of bridge and location of bridge, of accomplishing the ends at which the present bill aims, I shall be glad to aid in the passage of such a measure. But I should not be justified in signing the present bill in view of the protest of the Superintendent of Public Works."

May 27.

Veto of Senate and Assembly bills for the relief of Henry Rehwinke; Michael Gavin; George Curtis Dubois; Patrick Ginley; Philip Ryan; Adolph S. Wasserman; Thomas P. Wilson; James N. Enright; Charles B. Von Gerichtun; Adolphus Brown; John Fitzgibbons; W. L. Markell; Bernard Meehan; Thomas Cassidy; George H. Walsh; Thomas G. Mellon; James A. Dourigan; W. W. O'Connor; Michael McGrath, policemen and firemen.

"These bills form a class by themselves. They are designed to permit the re-entry into the police and fire department of men who have resigned or have been removed upon charges which it is contended were unjust.

If I should sign them it would form a precedent for similar action in the case of certainly hundreds and probably thousands of other men who have been removed, or who have resigned in like manner. From the inquiries I have been able to make, I am inclined to think that in one or two instances among the bills before me, the men may have suffered an injustice in the past; that in two or three instances it is practically certain that no injustice has been done; and that in the great bulk of the cases there are no means whatever for finding out the rights of the matter. In any event, it is obviously impossible for either the Governor or the Legislature to decide on the merits of each individual case. A general policy must be adopted to meet all the cases. Either some general law should be passed providing opportunity of rehearing and reinstatement in the case of firemen and policemen who are removed from

the department; or else the practice should be observed of passing only upon cases where the fire department or police department requests the Legislature to act; or else we should adhere to the present system, realizing that occasional injustice may be done to an individual, but accepting this as preferable to the alternative of never treating any decision as final. Probably the best method might be a provision in the charter to provide that within a certain period of time a rehearing of any case should be had on application of the person against whom charges were made, or, in the event of a resignation that a reinstatement may be allowed on a similar request. In any event it is extremely undesirable to deal with these cases by the haphazard method of passing laws to allow rehearings."

May 27.

Veto of Senate bill for the erection of a bridge for developing the power of the Niagara River at Buffalo.[26]

"This bill has on its face an entirely praiseworthy object, that is to say, the promotion of an experiment to see whether the waters of the Niagara river cannot be used to give a vast power system for the benefit of the city of Buffalo. But the bill is so drawn as to make it likely that

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[26] The project of utilizing the upper part of Niagara river for power purposes, which had been under consideration in the Legislature several years, and which had more than once been presented to the executive in bills intended to provide means for carrying the project into effect, was finally embodied in an act passed in 1900, chapter 686, "to provide for the organization of the Mather Power Bridge Company, and to permit experiments and the erection of a power bridge for developing the power of Niagara river, at the city of Buffalo upon plans to be approved by the New York State Engineer and Surveyor and the United States War Department to protect navigation." The act contemplated the erection of a "power bridge having power wheels connected therewith, for developing the power of Niagara river;" but before the bridge could be constructed an "experimental span" was to be erected, work on which was to be begun within four years after the passage of the act, and completed within two years after commencement of the work.

it provides for the erection of a bridge across the Niagara river wholly without reference to whether the attempt to introduce the power system is a failure or not. The language of the bill is such that the bridge across the river could apparently be built even though the preliminary power bridge span was considered a failure by the State Engineer. At any rate, the State by this bill, if enacted into law, would at once surrender all right to object to any such bridge, whether the power bridge span did or did not prove a failure, and whether the State authorities did or did not regard the new project as a menace to navigation. Unquestionably the National government would still have the power to take into account the question of navigation under proper safe-guards; but it would, in my judgment, be wise for the State also to retain control of the matter. It might or might not be wise for the State to sanction the erection of the bridge without regard to the use of the power scheme in connection therewith; but this is a proposition which should be considered on its own merits and not under color of introducing a great power scheme. If the right to erect such a bridge without regard to whether the power scheme is or is not feasible is desired, then a bill for such a purpose should be introduced as such, and allowed to take its chances on its own merits. If the power scheme is the essential and vital feature of the undertaking, then it should be made clear in the bill that the bridge is only to be built if the power scheme proves a success; and, moreover, ample provision should be made by which the State may secure all the engineering talent desired in order to supervise and keep control of the undertaking."

May 27.

Veto of Senate bill relative to the adulteration of beer.

"This bill seemingly does nothing more than repeat the Public Health Law, article 3, sec. 41, subdiv. 7, C. The Public Health Law, says: 'An article shall be deemed to

be adulterated' * * * 'In the case of ale or beer, if it contains any substitute for hops or pure extract of hops, or if any such substitute is used in the manufacture thereof.' The present bill says: 'After the passage of this act no substitute for hops or pure extract of hops shall be used in the manufacture of ale or beer sold or offered for sale in this State. All ale or beer shown to contain any substance used as a substitute for hops or pure extract of hops is hereby declared adulterated.'

These provisions are absolutely identical, and there is therefore no warrant for putting the present bill on the statute books.

The final section of the present bill provides that in addition to the fine of one hundred dollars for violating the provision of the Public Health Law against adulterations, it shall be permissible to add imprisonment in the county jail for three months. This would make it possible to inflict a far severer penalty upon a man who should adulterate beer than upon the man who for instance should violate section 41, subdiv. B 5 of the Public Health Law by selling food composed of diseased or decomposed or putrid or rotten animal or vegetable substance. It is obviously absurd to provide a heavier penalty for the adulteration of beer than for using putrid and rotten animal substances in adulterating food."

May 27.

Veto of Assembly bill in relation to pharmacists and druggists.[27]

"After carefully investigating this matter and getting reports from a large number of disinterested outsiders, who have sought to find out on the ground not only of the equity

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[27] An act passed in 1900, chapter 453, regulated the working hours of pharmacists and drug clerks in cities of 1,000,000 or more inhabitants. It prescribed the general maximum limit of seventy hours per week for drug clerks with some variations for emergencies.

of the case but the feeling of the clerks interested, I have come to the conclusion that on the whole less injustice will result from waiting another year for the proper method of relief than would result from signing the bill in its present shape. The drug clerks are hopelessly divided on this bill and a very large number of them feel that if signed it would probably work a serious hardship to them in the way of interfering with their days off and even with their vacations. There is no question that there should be shorter hours for drug clerks and that in some cases at present hardship results from the length of hours. There is further no question that many of the proprietors have behaved with extreme shortsightedness in opposing any proper measure; and should they continue in this attitude of mere obstruction, it will probably result in the necessity of accepting any measure, no matter what crudities it may contain, rather than to submit to total lack of relief; but it is certainly wise to give one more chance for the passage of a proper measure. It is to be hoped that the advocates of the relief will realize that the passage of a measure too drastic in form simply jeopardizes it, and may, as in this instance, prevent the adoption of any measure whatever. In making such a change of policy as was attempted in this bill, it is very desirable to make the dislocation felt as little as may be, and above all, to be careful that the bill does not damage those whom it proposes to protect.

May 27.

Veto of Assembly bill relative to offensive trades in Brooklyn.[28]

"If the Supplemental Barren Island bill had passed, I should have signed both it and the present measure, and the

[28] An act passed in 1900, chapter 663, amended section 1212 of the Greater New York charter of 1897, chapter 378, by adding a provision prohibiting the disposal of garbage by specified methods in the borough of Brooklyn, and requiring the immediate removal of such business therefrom

advocates of destroying the Barren Island nuisance are in part responsible for the defeat of their measure, as it was within their power, by the exercise of care and forethought, to have embodied the supplemental measure in this which actually passed. But, with only the present bill before me, I find, by consultation with the health officers of the port of New York and other authorities, that serious trouble would in all probability follow upon signing it. It takes effect immediately, that is, at the beginning of the hot season, and it neither provides, nor gives time to provide, for the establishment of any other method of disposing of the garbage, dead animals, etc., of New York city. If given three or four months, the city authorities could, without any question, develop a plan for the proper disposal of the garbage, and, with this warning, they can have no excuse for failure to provide such method in the future, if, at the next session of the Legislature, a bill similar to the present bill, but giving a reasonable time before going into effect, is passed. If, during the coming summer, the nuisance complained of is unabated, such a bill will unquestionably be introduced and enacted in a law. If the garbage cannot be disposed of under the present method, save by creating a nuisance to numerous citizens of the city, then that method must be altered. The present summer will undoubtedly determine whether or not such nuisance can be abated. If it is not done away with, then the city authorities and those responsible for creating the nuisance may as well make up their minds that it will be abolished by law, and the responsibility will rest with them for any complications that may ensue.

Meanwhile, I shall send copies of this memorandum to the State Board of Health and to the Health Officer of the

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and the abatement of such business therein. In New York Sanitary Utilization Co. v. Health Department (1901), 61 App. Div. 106, this act was held unconstitutional as to a corporation operating under an existing contract with the city and at a place chosen by city authorities. The act impaired the obligation of a contract.

port of New York, directing them to communicate with the Health Board of the City of New York, and by next Fall to report to me upon the exact condition of affairs, and upon what remedies can be adopted — and some remedies must be adopted — in case the nuisance caused the people on the shores affected is not done away with this summer."

May 27. The omnibus veto included the following bills:

The following bills did not receive Executive approval because there was no return to the Executive Department of any action taken by the mayors of the cities which they affect:

A. 1212. Relative to First Universalist Society, Mount Vernon.

A. 1843. Relative to the investigation of sources of light and heat supply in the city of Syracuse.

A. 2368. To amend the charter of the city of Oswego.

S. 1178. Relative to bonds for street paving, Mount Vernon.

The following bills did not receive Executive approval because they were vetoed by the mayor of the city of New York:

A. 100. Confirming certain appointments made by the fire commissioners for the former city of Brooklyn.

A. 423. Relief of Manhattan East Side Mission.

A. 647. Relief of Isabella Heimath.

A. 684. Relief of clerks in Kings County Court.

A. 749. Relative to extradition of William R. Foster.

A. 753. Relative to newspapers to be designated in which corporate notices shall be advertised.

A. 826. Relative to bridge across mill pond, 31st and 32d wards, Brooklyn.

A. 1046. Relative to Beth Israel Hospital Association.

A. 1453. Relative to stoop lines, city of New York.

A. 1628. Relative to claim of Margaret Hudson.

A. 1697. Relative to separate department of elections.

A. 1723. Relative to Municipal Court, borough of Brooklyn.

A. 1798. Relative to public park in the fourth ward.

A. 1879. Relative to Jewish Theological Seminary.

A. 1980. Relief of First Methodist Episcopal Church.

A. 1987. Relative to public park to be known as Hamilton Park.

A. 2006. Relative to cultivation of trees and vegetation, city of New York.

A. 2264. Relative to payment of claims against Long Island City.

A. 2276. Relative to public schools in boroughs of Queens and Richmond.

A. 2286. Relative to offensive trades, borough of Brooklyn.

A. 2293. Relative to volunteer firemen, boroughs of Queens and Richmond.

A. 2300. Relief of Evangelical Lutheran Church of St. James.

A. 2402. Relative to appointment of board of lunacy examiners.

S. 610. Relative to acquiring title to a public place bounded by Tremont Avenue, 24th ward.

S. 910. Relief of Eagle Avenue German Baptist Church.

S. 990. Relating to police pension fund.

S. 1009. Relative to removal of snow and ice from sidewalks.

S. 1058. Relative to clerks and assistant clerks, Municipal Courts.

S. 1258. Relative to engineers.

S. 1265. Relative to establishment of a public driveway, New York.

S. 1314. Relief of Michael Gavin.

S. 1377. Relative to public park to be known as St. Nicholas Park.

S. 1451. Relative to inspection and testing of gas meters.

S. 1489. Known as the "Rapid Transit Bill."

The following bill was not approved for the reason that it was vetoed by the mayor of the city of Yonkers:

A. 2227. Relative to the rate of water rents in the city of Yonkers.

The following bills are not approved because of defective drafting, questionable propriety, objectionable provisions, and duplication of bills already signed:

A. 121. To provide for appointment of clerk of grand jury in Madison County.

A. 582. To amend the Fish, Game and Forest Law in relation to taking of bass in St. Lawrence county.

A. 692. To confer jurisdiction upon the Court of Claims to hear and determine the alleged claim of E. J. Bernard & Co. against the State for damage alleged to have been sustained by them and to render judgment therefor.

A. 1998. To amend charter of city of New York relative to powers of commissioners of deeds.

A. 1153. To amend the Membership Corporation Law relative to taxes assessed on cemetery lots.

A. 1226. Authorizing the Adjutant-General to issue to regularly organized camps of Sons of Veterans military arms.

A. 1328. To amend the Canal Law relative to the time of opening the State canals.

A. 1370. Relief of Thomas P. Wilson, ex-policeman city of New York.

A. 1381. To authorize the village of White Plains to compel the owners of property fronting on any streets to repair the curbstones, sidewalks, etc., in front of their respective lots.

A. 1619. An act to amend an act to consolidate and amend the several acts relating to the village of Watkins.

A. 1735. Relative to certain fish that may be caught in waters named.

A. 1772. To amend the Poor Law relative to support of poor persons.

A. 1881. Authorizing the Court of Claims to hear and determine the alleged claims of Norman Tyron and others.

A. 1907. Relative to fishing in Lake Erie.

A. 1919. To amend Code of Civil Procedure relative to fees of inventory appraisers.

A. 1953. Relative to office of sheriff of Erie County.

A. 1960. To amend chap. 588, Laws of 1898, relating to apportionment of personal property in the county of Queens.

A. 1993. An act relative to villages, constituting chapter twenty-one of the General Laws, relating to publishing notices of election.

A. 1996. Relative to unpaid taxes in that part of the city of New York constituting Long Island City, towns of Jamaica and Flushing and part of the town of Hempstead.

A. 2004. To authorize the board of police commissioners of the city of New York to reconsider the application of Charles Gerichten and Adolphus Brown.

A. 2022. Legalizing the official acts of Herbert G. Steele.

A. 2076. Relative to alleged claim of Thomas Sullivan for capture of Henry F. Hardy, an escaped convict.

A. 2150. To revise, and amend the several acts relative to the Reformatory at Elmira.

A. 2219. To amend section 3314 of the Code of Civil Procedure relative to fees of jurors.

A. 2227. To amend the Code of Civil Procedure relative to inventory appraisals of the estate of decedents.

A. 2258. Relative to real property sold to guardians in socage.

A. 2266. To amend the Town Law relative to town meetings.

A. 2295. To amend section 40, chap. 688, Laws of 1892, being chap. 36 of the General Laws, known as the Stock Corporation Law.

A. 2297. To amend section 674a of the Penal Code relative to the badge or button of the G. A. R.

A. 2381. To revise charter of the city of Yonkers.

A. 2385. To amend section 640 of the Penal Code relative to the desecration of the flag of the U. S. or of this State.

A. 2401. Relief of the village of Ardsley, Westchester County.

A. 2415. To legalize the official acts of certain justices of the peace in the counties of Orange, Rockland and Sullivan.

A. 2438. To amend the Labor Law relative to the protection of labor employed on buildings in citites.

S. 644. Authorizing the practice of medicine by certain persons.

S. 781. Creating a county contracting board, County of Rensselaer.

S. 793. Relating to acknowledgments of the executions of instruments in writing by certain persons in the islands of Cuba, Porto Rico, Guam, Philippines, and the Hawaii Islands.

S. 801. To amend title 12 of the Penal Code relative to public health and safety.

S. 874. To hear charges against Henry E. Rehwinke, a fireman of first grade, New York city.

S. 1087. To authorize the National Conservatory of Music to contract with its pupils for instruction.

S. 1102. To amend Tax Law relative to the taxation of public franchises as real property.

S. 1140. To legalize the official acts of A. P. Richardson, a justice of the peace, Essex County, town of Chesterfield.

S. 1174. Relative to alleged claims of John J. Donovan against the State.

S. 1218. Town of Grand Island, bridge across Niagara River.

S. 1262. Relief of George Curtis Dubois.

S. 1264. To authorize the incorporation of associations to erect monuments to perpetuate the memory of soldiers who fell in defense of the Union.

S. 1227. To authorize and empower the town of Tonawanda, Erie county, to refund the indebtedness created for improvement of Delaware Road, and provide for the payment thereof.

S. 1281. Relief of Patrick Ginley, New York City.

S. 1292. Requiring mortgages of personal property to be filed with the town clerks and relative to places where mortgages shall be filed.

S. 1362. To enable Phillip Block and Timothy P. Sullivan to take the examination of the State Board of Law Examiners for admission as attorneys and counsellors at law.

S. 1397. To provide for the improvement of streets and avenues in certain wards of the several boroughs of the city of New York.

S. 1443. Relative to fishing with set lines in Honeoye Lake.

S. 1466. To allow the Court of Claims to hear and determine the alleged claim of J. Smith McMaster against the State.

1899. MAY. EXTRAORDINARY SESSION.

May 17. The Governor issued a proclamation convening the Legislature in extraordinary session on the 22d inst.

May 22. The Legislature convened in extraordinary session pursuant to proclamation, and on the same day the Governor transmitted the following:

MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *May* 22, 1899.

TO THE LEGISLATURE.—I have called you together in extraordinary session for the purpose of considering the subject of the taxation of franchises.

My message to the Legislature of March 27, 1899, ran in part as follows:

"At present the farmers, the market gardeners and the mechanics and tradesmen having small holdings, are paying an improper and excessive portion of the general taxes, while at the same time many of the efforts to remedy this state of affairs, notably in the direction of taxing securities are not only unwise, but inefficient, and often serve merely to put a premium upon dishonesty."

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"There is evident injustice in the light taxation of corporations. I have not the slightest sympathy with the outcry against corporations as such, or against prosperous men of business. Most of the great material works by which the entire country benefits have been due to the action of individual men, or of aggregates of men, who made

money for themselves by doing that which was in the interest of the people as a whole. From an armor plant to a street railway no work which is really beneficial to the public can be performed to the best advantage of the public save by men of such business capacity that they will not do the work unless they themselves receive ample reward for doing it. The effort to deprive them of an ample reward, merely means that they will turn their energies in some other direction; and the public will be by just so much the loser. Moreover, to tax corporations or men of means in such a way as to drive them out of the State works great damage to the State. To drive out of a community the men of means and the men who take the lead in business enterprises would probably entail, as one of its first results, the starvation of a considerable portion of the remainder of the population."

"But while I freely admit all this, it yet remains true that a corporation which derives its powers from the State should pay to the State a just percentage of its earnings as a return for the privileges it enjoys. This should be especially true for the franchises bestowed upon gas companies, street railroads and the like. The question of the municipal ownership of these franchises cannot be raised with propriety until the governments of all municipalities show greater wisdom and virtue than has been recently shown, for instance, in New York city; and the question of laying and assessing the tax for franchises of every kind throughout the State should in my opinion be determined by the State itself. I need not point out to you that in foreign communities a very large percentage of the taxes comes from corporations which use the public domain for pipes, tracks and the like."

I stated that the power of assessing the tax on franchises should be left with the State authorities — not the local authorities — because in my view this was desirable both for the sake of providing against improper favoritism of

or discrimination against corporations by the local authorities, for the sake of working equity as between the franchises in different localities, and finally for the sake of providing for the cases where a railroad or telephone or telegraph line runs through several different communities.

Many representatives of corporations owning franchises heartily approve of having them properly taxed; and I am confident that, in the end, this will be of positive benefit to the franchise owners, and in no way oppressive to them, save as all taxes are oppressive to all owners of property.

The line of cleavage between good and bad citizenship does not follow the line dividing the men who represent corporate interests from the men who do not; it runs at right angles to it. We are bound to recognize this fact, to remember that we should stand for good citizenship in every form, and should neither yield to demagogic influence on the one hand, nor to improper corporate influence on the other. There is no intention of oppressing people who have put their money into franchises. We recognize that, as in the case of all legitimate business, they benefit not only themselves but the community at large. If a franchise is worth very little, it should be taxed very little; but where the franchise is of great value, it certainly should be heavily taxed; and the value is of course based upon the use of the city's or State's real estate. Such use of the public real estate should not be given without substantial returns; returns not only in the way of service to the public, which of course a street railway or a gas company gives, precisely as the proprietor of a grocery or dry goods store gives it, but also in the way of bearing a just share of the burden of taxation; again, precisely as the owner of the grocery or dry goods store bears his share, the difference being that a railroad company, for instance, owes infinitely more than the proprietor of a big business establishment does, to the real estate itself. Of course, this value differs greatly in different places. Where population is dense, as

in New York city, the real estate along which the tracks are laid on Broadway may be worth an immense amount for every lineal foot, exactly as the real estate fronting this portion of Broadway is worth an immense amount for every lineal foot. In sparsely settled districts, however, the value of the real estate of the railroad will diminish greatly, just as the value of the realty through which it runs diminishes.

I am perfectly well aware that as Chief Justice Marshall says: "The power of taxation is the power of destruction."* But this applies to every species of property. If demagogues or ignorant enthusiasts who are misled by demagogues could succeed in destroying wealth, they would of course simply work the ruin of the entire community; and first of all, of the unfortunates for whom they profess to feel an especial interest. But the very existence of unreasoning hostility to wealth should make us all the more careful in seeing that wealth does nothing to justify such hostility. We are the true friends of the men of means, we are the true friends of the lawful corporate interests which do good work for the community, when we insist that the man of means and the great corporation shall pay their full share of taxes and bear their full share of the public burdens. If this is done, then sooner or later will follow public recognition of the fact that it is done; and when there is no legitimate basis for discontent, the American public is sure sooner or later to cease to feel discontent.

The Legislature passed, and there is now before me, a bill for the taxation of franchises by treating them as realty. After watching the progress of this bill I became convinced that the opposition to it was less to its particular features than to the general principle of taxing franchises in any way; in other words, I became convinced that any really effective measure of taxation aimed at franchises would be vigorously opposed. It therefore became of the utmost im-

* See McCulloch v. Maryland (1819), 4 Wheat. 316, opinion p. 395.

portance to secure this year some statutory enactment which would distinctly recognize the principle which we seek to establish. Toward the end of the session it became evident that the influences against the taxation of franchises would be content with nothing save the defeat of any measure of substantial relief; and a measure of less than substantial relief I would not accept. Finally it became evident that the Legislature could pass only one bill and that without amendment. I therefore sent in a special message asking for the passage of this bill.* It was passed on the last day of the session. It represents a long stride in the right direction, and one from which there must be no retrogression.

Nevertheless, it can be greatly bettered if amended in two important particulars. In its essential principle, that of taxing franchises as realty, it is right and proper. After much study of the question, I am convinced that in this way we can come nearer to doing justice than in any other which has as yet been proposed. It is no new thing to treat franchises as realty. They are so treated in Washburn's work on real property, and by Chancellor Kent; but under the laws of New York as they are now a franchise cannot be taxed except by special statute, and as a matter of fact this extremely valuable species of property is in very many, if not in most cases, untaxed or taxed far below its value in comparison with other kinds of real estate. Local franchises are granted for various purposes and under varying conditions; sometimes by special statute and sometimes by the municipal authorities under a general statute. The value of the franchise of course varies widely in different localities, depending upon a variety of circumstances; but a great part of its value is dependent upon the same causes which operate to make other kinds of real estate more valuable in one locality than in another. The franchise is

* *Ante*, p. 35.

inseparable from the property of the corporation in the street, whether this property consists of poles, pipes or tracks, above the ground, under the ground or on the ground. The right to lay a railroad track and operate a railroad in a public street cannot be separated or dissociated from the railroad itself. This is equally true of the right to lay water and gas mains and the like. The franchise is a necessary and inevitable element of value and is a proper subject of consideration in determining the taxable value of the real property of the corporation enjoying it. The right to occupy a street should not be classed as an intangible something, distinct from the other property of the company, but should be treated as a necessary incident to the tangible property and one to be considered in measuring the value of the whole property. The Nichols law in Ohio which provides for the taxation of certain kinds of corporations such as telegraph and telephone companies and the like, doing business in the public streets, proceeds along these lines, and has in practice been found to work admirably. It is possible that further experience may enable us to find some better method of taxing franchises, but with our present knowledge it is certainly wisest to tax them as realty.

Under the bill before me the assessment will be levied by the local authorities. This would result in many cases in a dozen different sets of local authorities assessing the value of different parts of the same franchise. It is on every account far better that this assessment should be delegated to the State authorities who will necessarily ascertain all the conditions affecting the franchise and obtain information which will enable them to judge of the value of the franchise in the different localities in which it is exercised. The Board of State Tax Commissioners can collate the facts, compare conditions and determine values as a result of a wider range of observation and experience than can be obtained by local officers, and under them the

system of assessment will tend to produce justice, harmony and uniformity. This is the system adopted under the Nichols law and it has worked well in practice.

Furthermore, the bill before me fails to take account of the fact that, in a very unequal and irregular way, many corporations do already pay a certain, though usually an utterly inadequate, sum in taxes. Some pay nothing at all to the local municipalities; but others pay sums varying from one to five per cent. on their gross earnings. The amounts have been determined in the most haphazard manner and bear no proportion whatever to the value of the franchises or to their earning capacity. It is obviously unjust, when introducing a system under which we believe that these franchises will for the first time be fully and fairly taxed according to their respective values, not to allow for this existing and inequitable taxation. Accordingly it should be provided that from the sum assessed by the State authorities as the tax which a corporation must pay because of its local franchise, there shall be deducted the amount already annually paid by it to the locality for such franchise. In no other way is it possible to tax these corporations with uniformity and equity. It is contended by the advocates of the bill that in reaching the value of the franchise under the new law the amount thus paid away in taxes must be allowed for and deducted anyhow; but it is not certain that this would be done, and in any event the principle should be definitely established by the law itself. There can be no possible opposition to putting it in the law by any man who is anxious to tax corporations as other property is taxed, and who believes that this end can be attained by taxing them as realty. Either by taxing them as realty we shall tax them at their full value, or we shall not; if, as we hold, the former is the case, it would be unjust to tax them for more than their full value, and this would happen were not these existing taxes deducted.

If it is claimed that the particular method of assessment by the State Tax Commission may be improper or unjust,

provision can be made for the same appeal to the courts that now lies in the case of any assessment on other kinds of property.

Accordingly, I recommend the enactment of a law which shall tax all these franchises as realty, which shall provide for the assessment of the tax by the Board of State Tax Commissioners, and which shall further provide that from the tax thus levied for the benefit of each locality there shall be deducted the taxes now paid by the corporation in question. Furthermore, as the time for assessing the largest and wealthiest corporations, those of New York and Buffalo, has passed for this year, and as it will be preferable not to have the small country corporations taxed before the larger corporations of the cities are taxed, I suggest that the operations of the law be deferred until October first, of this year.[23]

THEODORE ROOSEVELT.

SPECIAL MESSAGES.

May 24. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 24, 1899.

I call to your attention the desirability of making an appropriation to provide for the proper celebration of the

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[23]At this session an act was passed, chapter 712, amending the tax law (L. 1896, chap. 908), by including provisions relative to the taxation of public franchises as real property. The valuations of special franchises were to be fixed annually by the State Board of Tax Commissioners, which valuations were to be entered on local tax rolls, and the special franchises so assessed were to become a part of the taxable property of the locality for the current year. The act prescribed procedure and other regulations for carrying its provisions into effect.

The constitutionality of this special franchise tax law was sustained in People ex rel. Metropolitan St. R. Co. v. State Tax Comrs. (1903) 174 N. Y. 417, aff'd 199 U. S. 1; People ex rel. Brooklyn City R. Co. v. State Tax Comrs. (1903) 174 N. Y. 417, aff'd 199 U. S. 48. See also Buffalo Gas Co. v. Volz (1900) 31 Misc. 160; New York L. & W. R. Co. v. Roll, 32 Misc. 321.

See the emergency certificate of April 27, *ante*, p. 45.

return of Admiral Dewey, an American whom all Americans worthy of the name delight to honor, the man who at the close of the nineteenth century has added fresh renown to the flag that has already so often been borne to glorious triumph on the land and on the sea. The thunder of Dewey's guns in Manila Bay raised in a moment's time the prestige of American arms throughout the world, and added a new honor to American citizenship at home and abroad; and his services throughout the trying months that followed, though less brilliant, were hardly less useful to his country. It is fitting that we should show in appropriate form the high regard we feel for the great Admiral, and for every officer and sailor of his fleet; that we should testify our appreciation of the debt under which this country lies to him and to them, and indeed to all their comrades in our forces afloat and ashore.[24]

THEODORE ROOSEVELT."

May 25. To the Legislature: Certifying to the necessity of the immediate passage of the franchise tax bill, which became chapter 712. [See note 23.]

May 25. To the Legislature: Certifying to the necessity of the immediate passage of a bill to provide compensation for the tax commission, which became chapter 713.

May 25. To the Legislature: Certifying to the necessity of the immediate passage of a bill making an appropriation for the celebration of the return of Dewey, which became chapter 714.

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24 Chapter 714, approved May 26, appropriated $75,000 to be expended by the Governor in such manner as he might deem proper "for the due and appropriate participation by the State in a celebration to be held in the city of New York in honor of the return of Admiral George Dewey to the United States." September 29 and 30, 1899, were fixed as the dates for the celebration of Admiral Dewey's return. On the 18th of September Governor Roosevelt issued a proclamation appointing and setting apart the two last named days as "public holidays to be observed throughout the State as days of general thanksgiving."

May 25. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 25, 1899.

I recommend for your consideration an amendment of section thirty-seven of the State Finance Law, as added by chapter five hundred and eighty of the laws of 1899, changing the date of the payment to the State Treasurer of the moneys therein specified, and also providing that the section shall not apply to the manufacturing fund of the State prisons, known as the capital fund.[25]

THEODORE ROOSEVELT."

May 25. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the State Finance Law relative to the payment of fees into the State Treasury and to the manufacturing funds of the State Prisons, which became chapter 715.

May 25. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 25, 1899.

I recommend for your consideration at this extraordinary session of the Legislature an appropriation sufficient to pay in full the expenses thereof.[26]

THEODORE ROOSEVELT."

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[25] The Governor's recommendation as to the payment of fees into the State treasury, was embodied in chapter 715, which amended a previous act, chapter 580, passed at the same session, by changing the date of payment from the first day of the month to the fifth, and exempting from the operation of the section "the manufacturing fund of the State Prisons, known as the capital fund."

[26] Chapter 716, approved May 26, appropriated $12,000 for the expenses of the extraordinary session.

May 25. To the Legislature: Certifying to the necessity of the immediate passage of a bill making an appropriation for the expenses of the extraordinary session, which became chapter 716.

May 25. The extraordinary session adjourned without day.

1900. JANUARY 3. LEGISLATURE, ONE HUNDRED AND TWENTY-THIRD SESSION.

THEODORE ROOSEVELT, Governor.

ANNUAL MESSAGE:

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 3, 1900.

TO THE LEGISLATURE OF THE STATE OF NEW YORK.—It is a very genuine pleasure to congratulate the Legislature upon the substantial sum of achievement in legislation and administration of the past year. Laws of the utmost usefulness to the community have been enacted, and there has been a steady betterment throughout the year in the methods and results of the administration of the government.

CANALS.

The first matter which had to be dealt with on the incoming of the new administration was the question of the canals. New York State led the Union in the development of canal navigation. Of recent years the change in the methods of transportation, by immensely increasing the railroad competition with the canal, has greatly altered the conditions of successful administration of the latter. There

were really two questions to be solved in reference to the canals. The first was as to their administration; the second as to the general canal policy of the State in the future. A very slight examination showed that as regards the latter there were not sufficient data to warrant the formulation of an intelligent policy. A commission appointed by my predecessor to examine into the conditions which make for the commercial supremacy of the State, was still sitting. This commission was continued. The subject with which it dealt was of so vast and of such vital importance that it has not yet been able to complete its labors; and it was evident it would not have time to consider the canal problem in the way that was desirable. I accordingly appointed a committee consisting of General Francis V. Greene of New York, Mr. Frank S. Witherbee of Port Henry, Major Symons of the U. S. Army, Mr. John N. Scatcherd of Buffalo and ex-Mayor George E. Green of Binghamton, to examine the whole canal question. Their report will be ready in about a fortnight, and will be submitted to the Legislature with a special message, probably submitting at the same time the report of the Commerce Commission.[1] I wish to call attention to the fact that the gentlemen serving on these two bodies are business men, whose lives are filled with exacting duties; yet they have given, unpaid, months of their valuable time and their best thought and effort to the solution of these problems. Such disinterested expert service is of incalculable value to the State and makes it greatly the debtor to the men rendering the service. The conduct of these two commissions, and of

[1] The report of the special canal commission, of which General Greene was chairman, was transmitted to the Legislature by the Governor on the 25th of January, 1900. See Assembly Document, No. 79, and also the special message of January 25, accompanying the report.

The report of the commerce commission was transmitted to the Legislature at the same time, and was accompanied by a special message bearing the same date. For report, see Assembly Document No. 69. See also 1898, note 11, *ante*, vol. 9, p. 849.

the Commission on the Educational Bill emphasizes one of the most pleasing features of our public life, viz.: the readiness with which able and high minded private citizens will do special public work when they are convinced of its necessity from the public standpoint.

There remained the question of the proper administration of the canals. Very grave accusations had been made against the former canal management; accusations which varied from charges of mere inefficiency and bad judgment, to charges of wholesale personal corruption, criminal in its character.

SUMMARY OF WHAT WAS DONE.

Such being the conditions, there were two things to be done: first, to secure by the employment of the best counsel an investigation which would be final and complete, and determine whether it were possible to proceed criminally against any contractor or public employee; and, second, if there had been no criminal misconduct, but if there had been failure to manage the canals so as to secure the best results for the State, then to provide a thorough and radical change in the management. These were the only two lines on which action could be taken. On both of them action was taken. On the one hand, the investigation was so conducted as to leave no room for any further question as to criminal proceedings; and, on the other hand, the reformation in the methods of management has been so complete as to leave nothing to be done save to continue and perfect the new system.

DETAILED STATEMENT.

As a result of the reports made to my predecessor in office by the commission appointed by him to make an investigation concerning the work of improving and enlarging the canals under the acts of 1895 and 1896, com-

monly known as the "Nine Million Dollar Acts," the accusation against the then existing canal management had been resolved into two categories.

In the first place it was asserted that there had been on the part of the outgoing State Engineer and Surveyor and of the former Superintendent of Public Works, malfeasance and misfeasance in office which called for the criminal prosecution of themselves, of their subordinates and of certain contractors. This was a legal question, for if guilty, their punishment could come only through the courts, inasmuch as they were out of office. The ordinary machinery of the law was set in motion by the Attorney-General with the purpose of securing the punishment of any delinquent. In almost any other case, in view of the zeal with which the Attorney-General was carrying on these prosecutions, I should not have deemed it necessary to take any extraordinary action. But the charges were so grave and had been given such widespread publicity that I felt warranted in asking the assistance of the Legislature to enable me to take steps that would guarantee beyond all possibility of doubt the prosecution and punishment of any criminal who could be discovered by rigorous and searching investigation.

Accordingly, I appointed Mr. Austen G. Fox and Mr. Wallace MacFarlane of New York, well known members of the Bar, of opposite political faith to the accused, and the latter United States District Attorney in New York under President Cleveland, to assist the Attorney General in the institution and prosecution of such criminal proceedings as should be warranted by the testimony taken by the Investigating Commission and the reports made thereupon to my predecessor. The Legislature appropriated $20,000 to pay the expenses of the investigation. After working for several months, counsel reported to me that, in their opinion, on the evidence obtainable by

them, criminal prosecutions were inadvisable and impracticable. In the absence of evidence of fraudulent collusion between the State officers and the contractors, counsel concluded that the numerous instances of apparently unjustifiable favoritism to contractors, and of improvident agreements, reported by the commission, could not be said to be of a criminal character, though they did subject the State to a large pecuniary loss, and apparently showed grave delinquency on the part of those charged with the execution of the work. The delinquency shown justified public indignation; but it did not afford ground for criminal prosecution.

The special counsel stated at length their reasons for their conclusions, and the report is herewith transmitted to you.[2]

There is probably no lawyer of high standing in the State who, after studying the report of counsel in this case and the testimony taken by the Investigation Commission would disagree with them as to the impracticability of a successful prosecution. Under such circumstances the one remedy was a thorough change in the methods and management. This change has been made.

RESULTS.

The new Superintendent has managed the canals with the care and skill which would be expected in a private business enterprise. It is unnecessary to say that the highest standard of integrity has been demanded. There has been no toleration whatever of inefficiency, and no retention of any man who filled a needless position or who filled unworthily a necessary position. The season of 1899 was one

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[2] For the report of Messrs. Fox and Macfarlane, special counsel appointed to investigate canal contracts under the $9,000,000 act of 1895, chapter 79, see Assembly Document, No. 2, 1900. See also 1899, special message of April 10, and the accompanying letter from the counsel, and also note 20, citing the appropriation act, *ante*, p. 40.

of unusual activity on the canals; but the good effect of the new Superintendent's administration was made strikingly evident when, at the close of the fiscal year on October 1st, the accounts were made up. For the last eight months of the fiscal year ending October 1, 1899, although more business was done, the canals were run at a cost of about $450,000 as against about $590,000 for the same eight months of the preceding year, a net saving of nearly $140,000, or about twenty-five per cent. No work has been entered upon or permitted for any cause whatsoever save the needs of the canals. No man has been appointed save when it appeared that there was actual need of his services and that he could ably and honestly perform the duties of the place sought. No man who did his duty well has been jeopardized in his position; and no man known to have failed in his duty has been retained. In short, the canals have been managed with an eye single to the public good.

THE CANAL BOARD.

Under chapter 544, Laws of 1899, providing for the termination of certain of the outstanding contracts aggregating upwards of four million dollars, contractors representing contracts aggregating upwards of $2,350,000 made application to the Canal Board for their termination. Before "finding and determining what amounts were properly due," a committee of the Canal Board consisting of the Comptroller, the Attorney General, the State Engineer and the Superintendent of Public Works was appointed to examine and report upon the status of the contracts for the termination of which application had been made. The conditions surrounding every contract were carefully examined.[3] Reference was made to the report of the Canal

[3] An additional act for the termination of certain canal contracts under the $9,000,000 act was passed at this session, chapter 81, which authorized the canal board to "terminate, settle and adjust between the parties to all

Investigating Commission, to the report of the Engineers to the Commission and to the original testimony upon which the report of the Investigating Commission was based; also to the reports of Messrs. Fox and Macfarlane, and Mr. Shove. The contracts, specifications and agreements for extra work were carefully scrutinized and all the attending circumstances were considered as they actually existed.

TAXATION.

The whole problem of taxation is now, as it has been at almost all times and in almost all places, one of extreme difficulty. It has become more and more evident in recent years that existing methods of taxation, which worked well enough in a simpler state of society, are not adequate to secure justice when applied to the conditions of our complex and highly specialized modern industrial development. At present the real estate owner is certainly bearing an excessive proportion of the tax burden. Men who have made a special study of the theory of taxation and men who have had long experience in its practical application are alike in conflict among themselves as to the best general system. Absolute equality, absolute justice in matters of taxation will probably never be realized; but we can approximate it much more closely than at present. The last Legislature most wisely appointed a committee to consider the feasibility of a thorough and far-reaching change in our tax laws; and there is good reason to believe that their forthcoming report will present a scheme which will receive the support of substantially all classes of taxpayers, and which will be of such a character as to com-

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contracts made by the State of New York for the improvement of the Erie canal, Champlain canal and Oswego canal, and permitting return to the contractors of the moneys deposited by them, and payment of all moneys legally or equitably due them under their contracts with the State of New York."

mend itself to the most careful consideration of your body upon broad lines.[4]

The law must not only be correct in the abstract; it must work well in the concrete. Experience shows that certain classes or symbols of property which in theory ought to be taxed cannot under the present practice be reached. Some kinds of taxes are so fertile in tempting to perjury and sharp dealing that they amount to taxes on honesty — the last quality on which we should impose a needless burden. Moreover, where the conditions and complexity of life vary widely as between different communities, the desirability and possibility of certain taxes may seem or be so different that it is hard to devise a common system that will work. If possible the State tax should be levied on classes of property, and in a manner, which will render it collectible with entire fairness in all sections of the community, as for instance the corporation or collateral inheritance tax is now collected. So far as possible we should divorce the State and municipal taxes, so as to render unnecessary the annual equalization of values between the several counties which has proved so fertile a source of friction between the city and the country.

There is a constant influx into New York State of capital ofttimes previously incorporated under the laws of other States, and an increasing number of men of means from other parts of the country, non-residents of New York, come into this State to sojourn and to conduct and be at the head of various business enterprises which are drawn

[4] The legislative joint committee on taxation appointed in 1899, submitted its report on the 15th of January. See Senate Document, No. 7. The committee favored indirect taxation for state purposes, recommended a tax on mortgages, and a tax of one per cent. on the stock of national banks, state banks and trust companies. It was estimated that the mortgage tax would produce an annual revenue of $10,000,000 and the tax on banking institutions a revenue of $3,000,000. The committee submitted a bill intended to carry its recommendations into effect. As to the mortgage tax, see 1905, p. 800, and 1906 note 33, *post*, pp. 885, 920.

to New York as the financial center of the whole country. This calls for legislation which shall provide, in a broad and fair spirit, for taxing foreign capital in this State, whether in corporate or individual form, exactly as we tax domestic capital doing business along the same lines.

I call your attention to the fact that the great burden of taxation is local and not State. In the large cities the heavy local charges are mainly due to the action of the local authorities themselves. For this the local authorities are of course responsible. But sometimes taxation is added to by legislative enactment.

On certain points the failure of the tax laws has become so evident that it is possible to provide more or less complete remedies without waiting for a general scheme of reorganization. Again and again in recent years this has been recognized, and through legislative enactment certain species of property which had escaped taxation have been made to pay their proper share of the public burdens. The collateral inheritance tax offers a case in point. The corporation tax offers another. In all these matters of taxation, however, it is necessary to proceed with extreme caution, the path never being so simple and clear as the advocates of any particular measure invariably believe. Every wealthy corporation that perpetrates or is allowed to perpetrate a wrong helps to produce or inflame a condition of angry excitement against all corporations, which in its turn may in the end harm alike the honest and the dishonest agents of public service and thereby do far-reaching damage to the whole body politic. Much of the outcry against wealth, against the men who acquire wealth, and against the means by which it is acquired, is blind, unreasoning and unjust; but in too many cases it has a basis in real abuses; and we must remember that every act of misconduct which affords any justification for this clamor is not only bad because of the wrong done, but also because

the justification thus given inevitably strengthens movements which are in reality profoundly anti-social and anti-civic. Our laws should be so drawn as to protect and encourage corporations which do their honest duty by the public; and to discriminate sharply against those organized in a spirit of mere greed, or for improper speculative purposes.

There is plenty of misconduct, plenty of selfish disregard of the rights of others, and especially of the weak. There is also plenty of honorable and disinterested effort to prevent such misconduct or to minimize its effects. Any rational attempt to prevent or counteract the evils, by legislation or otherwise, is deserving of hearty support; but it cannot be too deeply impressed upon us that such attempts can result in permanent good only in proportion as they are made in a sane and wholesome spirit, as far removed as possible from whatever is hysterical or revolutionary. It is infinitely better when needed social and civic changes can be brought about as the result of natural and healthy growth than when they come with the violent dislocation and widespread wreck and damage inevitably attendant upon any movement which is revolutionary in its nature.

THE FRANCHISE TAX.

At the same time a change should never be shirked on the ground of its being radical, when the abuse has become flagrant and no other remedy appears possible. This was the case with the taxation of local franchises in this State. For years most of these franchises escaped paying their proper share of the public burdens. The last Legislature placed on the statute book a law requiring them to be treated as real estate for the purposes of taxation, the tax to be assessed and collected by the State Assessors for the benefit of the localities concerned. This marks an immense stride in advance. Of course at first serious difficulties are

sure to arise in enforcing it. The means for carrying it into effect are very inadequate. There may be delay before we get from it the substantial additions to the revenue which will finally accrue, and there may be disappointment to the enthusiasts who are so apt to hope too much from such legislation. But it will undoubtedly add largely to the public revenues as soon as it is fairly in operation, and the amount thus added will increase steadily year by year. The principle which this law establishes has come to stay. There will doubtless have to be additional legislation from time to time to perfect the system as its shortcomings are made evident in actual practice. But the corporations owning valuable public franchises must pay their full and proper share of the public burdens.

The franchise tax law is framed with the intent of securing exact and equal justice, no more and no less. It is not in any way intended as a means for persecuting or oppressing corporations. It is not intended to cut down legitimate dividends; still less to cut down wages or to prevent a just return for the far-sighted business skill of some captain of industry who has been able to establish a public service greatly to the advantage of the localities concerned, where before his time men of less business capacity had failed. But it is intended that property which derives its value from the grant of a privilege by the public, shall be taxed proportionately to the value of the privilege granted. In enforcing this law, much tact, patience, resolution and judgment will be needed. All these qualities the State Board of Tax Commissioners have thus far shown. Their salaries are altogether inadequate, for the new law has immensely increased not only their responsibilities, but their work. They should be given not only the needed increase for themselves, but also an appropriation for an additional number of clerks and experts.[5]

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[5] Chapter 96, passed March 8, appropriated an additional amount for salaries of the State Tax Commissioners and their subordinates, and for the administration of the department.

During the year 1899 not a single corporation has received at the hands of the State of New York one privilege of any kind, sort or description, by law or otherwise, to which it was not entitled, and which was not in the public interest; nor has corporate influence availed against any measure which was in the public interest. At certain times, and in certain places, corporations have undoubtedly exerted a corrupting influence in political life; but in this State for this year, it is absolutely true, as shown by the history of every measure that has come before the Legislature from the franchise tax down, that no corporate influence has been able to prevail against the interests of the public.

THE STATE AND PUBLIC UTILITIES.

It has become more and more evident of late years that the State will have to act in its collective capacity as regards certain subjects which we have been accustomed to treat as matters affecting the private citizen only, and that furthermore, it must exercise an increasing and more rigorous control over other matters which it is not desirable that it should directly manage. It is neither possible nor desirable to lay down a general hard and fast rule as to what this control should be in all cases. There is no possible reason in pure logic why a city, for instance, should supply its inhabitants with water, and allow private companies to supply them with gas, any more than there is why the general government should take charge of the delivery of letters but not of telegrams. On the other hand, pure logic has a very restricted application to actual social and civic life, and there is no possible reason for changing from one system to the other simply because the change would make our political system in theory more symmetrical. Obviously it is undesirable that the government should do anything that private individuals could do with better results to the community. Everything that tends to deaden indi-

vidual initiative is to be avoided, and unless in a given case there is some very evident gain which will flow from State or municipal ownership, it should not be adopted. On the other hand, when private ownership entails grave abuses, and where the work is of a kind that can be performed with efficiency by the State or municipality acting in its collective capacity, no theory or tradition should interfere with our making the change. There is grave danger in attempting to establish invariable rules; indeed it may be that each case will have to be determined upon its own merits. In one instance a private corporation may be able to do the work best. In another the State or city may do it best. In yet a third, it may be to the advantage of everybody to give free scope to the power of some individual captain of industry.

On one point there must be no step backward. There is a consensus of opinion that New York must own its own water supply. Any legislation permitting private ownership should be annulled.

MODERN INDUSTRIAL CONDITIONS.

Nothing needs closer attention, nothing deserves to be treated with more courage, caution and sanity, than the relations of the State to corporate wealth, and indeed to vast individual wealth. For almost every gain there is a penalty, and the great strides in the industrial upbuilding of the country, which have on the whole been attended with marked benefit, have also been attended by no little evil. Great fortunes are usually made under very complex conditions both of effort and of surrounding, and the mere fact of the complexity makes it difficult to deal with the new conditions thus created. The contrast offered in a highly specialized industrial community between the very rich and the very poor is exceedingly distressing, and while under normal conditions the acquirement of wealth by an individual is necessarily of great incidental benefit to the com-

munity as a whole, yet this is by no means always the case. In our great cities there is plainly in evidence much of the wealth contrasted with much poverty, and some of the wealth has been acquired, or is used, in a manner for which there is no moral justification.

A profound political and social thinker has recently written: "Wealth which is expended in multiplying and elaborating real comforts, or even in pleasures which produce enjoyment at all proportionate to their cost, will never excite serious indignation. It is the colossal waste of the means of human happiness in the most selfish and most vulgar forms of social advertisement and competition that gives a force to passions which menace the whole future of our civilization." But in continuance this writer points out that the only effectual check lies in the law of public opinion. Any attempt to interfere by statute in moral questions of this kind, by fettering the freedom of individual action, would be injurious to a degree far greater than is the evil aimed at. Probably the large majority of the fortunes that now exist in this country have been amassed, not by injuring mankind, but as an incident to the conferring of great benefits on the community — whatever the conscious purpose of those amassing them may have been. The occasional wrongs committed or injuries endured are on the whole far outweighed by the mass of good which has resulted. The true questions to be asked are; Has any given individual been injured by the acquisition of wealth by any man? Were the rights of that individual, if they have been violated, insufficiently protected by law? If so, these rights, and all similiar rights, ought to be guaranteed by additional legislation. The point to be aimed at is the protection of the individual against wrong, not the attempt to limit and hamper the acquisition and output of wealth.

It is almost equally dangerous either to blink evils and refuse to acknowledge their existence or to strike at them in a spirit of ignorant revenge, thereby doing far more

harm than is remedied. The need can be met only by careful study of conditions, and by action which while taken boldly and without hesitation is neither heedless nor reckless. It is well to remember on the one hand that the adoption of what is reasonable in the demands of reformers is the surest way to prevent the adoption of what is unreasonable; and on the other hand that many of the worst and most dangerous laws which have been put upon statute books have been put there by zealous reformers with excellent intentions.

TRUSTS.

This problem has a hundred phases. The relation of the capitalist and the wageworker makes one; the proper attitude of the State towards extreme poverty another; the proper attitude of the State towards the questions of the ownership and running of so-called "public utilities," a third. But among all these phases, the one which at this time has the greatest prominence, is the question of what are commonly termed "trusts," meaning by the name those vast combinations of capital, usually flourishing by virtue of some monopolistic element, which have become so startlingly common a feature in the industrial revolution which has progressed so rapidly during recent years.

Every new feature of this industrial revolution produces hardship, because in its later stages it has been literally a revolution instead of an evolution. The new inventions and discoveries and the new methods of taking advantage of the business facilities afforded by the extraordinary development of our material civilization have caused the changes to proceed with such marvelous rapidity, that at each stage some body of workers finds itself unable to accommodate itself to the new conditions with sufficient speed to escape hardship. In the end the accommodation of the class takes place; at times too late for the well being of many individuals. The change which should be unaccom-

panied by hardship if it came slowly, may be fraught with severe suffering if it comes too fast, even when it is in the end beneficial. Occasionally, moreover, the change is positively deleterious, and very often, even when it is on the whole beneficial, it has features which are the reverse. In some cases, while recognizing the evil, it is impossible with our present knowledge to discover any remedy. In others, a remedy can be applied, but as yet only at a cost that would make it worse than the trouble itself. In yet others it is possible, by acting with wisdom, coolness and fearlessness, to apply a remedy which will wholly or in great part remove the evil while leaving the good behind. We do not wish to discourage enterprise. We do not desire to destroy corporations; we do not desire to put them fully at the service of the State and the people.

The machinery of modern business is so vast and complicated that great caution must be exercised in introducing radical changes, for fear the unforeseen effects may take the shape of widespread disaster. Moreover, much that is complained about is not really the abuse so much as the inevitable development of our modern industrial life. We have moved far away from the old simple days when each community transacted almost all its work for itself and relied upon outsiders for but a fraction of the necessaries, and not for a very large portion even of the luxuries, of life. Very many of the anti-trust laws which have made their appearance on the statute books of recent years have been almost or absolutely ineffective because they have blinked the all important fact that much of what they thought to do away with was incidental to modern industrial conditions, and could not be eliminated unless we were willing to turn back the wheels of modern progress by also eliminating the forces which had brought about these industrial conditions. Not only trusts, but the immense importance of machinery, the congestion of city life, the capacity to make large fortunes by speculative enterprise, and

many other features of modern existence could be thoroughly changed by doing away with steam and electricity; but the most ardent denouncer of trusts would hesitate to advocate so drastic a remedy. What remains for us to do, as practical men, is to look the conditions squarely in the face and not to permit the emotional side of the question, which has its proper place, to blind us to the fact that there are other sides. We must set about finding out what the real abuses are, with their causes, and to what extent remedies can be applied.

That abuses exist, and that they are of a very grave character, it is worse than idle to deny. Just so long as in the business world unscrupulous cunning is allowed the free rein which, thanks to the growth of humanity during the past centuries, we now deny to unscrupulous physical force, then just so long there will be a field for the best effort of every honest social and civic reformer who is capable of feeling an impulse of generous indignation and who is far-sighted enough to appreciate where the real danger to the country lies. The effects are bad enough when the unscrupulous individual works by himself. They are much worse when he works in conjunction with his fellows through a joint corporation or trust. Law is largely crystallized custom, largely a mass of remedies which have been slowly evolved to meet the wrongs with which humanity has become thoroughly familiar. In a simple society only simple forms of wrong can be committed. There is neither the ability nor the opportunity to inflict others. A primitive people provides for the punishment of theft, assault and murder, because the conditions of the existing society allow the development of thieves and murderers and the commission of deeds of violence; but it does not provide for the punishment of forgery because there is nothing to forge, and therefore, no forgers. The gradual growth of humanitarian sentiment, often unconscious or but semi-conscious, combined with other causes, step by step

emancipated the serf from bodily subjection to his overlord; he was then protected in his freedom by statute; but when he became a factory hand the conditions were new and there were no laws which prevented the use of unguarded machinery in the factories, or the abuses of child labor, forced upon the conscientious employers by the unscrupulous until legislation put them on an equality. When new evils appear there is always at first difficulty in finding the proper remedy; and as the evils grow more complex, the remedies become increasingly difficult of application. There is no use whatever in seeking to apply a remedy blindly; yet this is just what has been done in reference to trusts.

Much of the legislation not only proposed but enacted against trusts is not one whit more intelligent than the mediaeval bull against the comet, and has not been one particle more effective. Yet there can and must be courageous and effective remedial legislation.

To say that the present system, of hap-hazard license and lack of supervision and regulation, is the best possible, is absurd. The men who endeavor to prevent the remedying of real abuses, not only show callous disregard for the suffering of others, but also weaken those who are anxious to prevent the adoption of indiscriminate would-be-remedies which would subvert our whole industrial fabric. The chicanery and the dishonest, even though not technically illegal, methods through which some great fortunes have been made, are scandals to our civilization. The man who by swindling or wrong doing acquires great wealth for himself at the expense of his fellow, stands as low morally as any predatory mediaeval nobleman and is a more dangerous member of society. Any law, and any method of construing the law which will enable the community to punish him, either by taking away his wealth or by imprisonment, should be welcomed. Of course, such laws are even more needed in dealing with great corporations or trusts than

with individuals. They are needed quite as much for the sake of honest corporations as for the sake of the public. The corporation that manages its affairs honestly has a right to demand protection against the dishonest corporation. We do not wish to put any burden on honest corporations. Neither do we wish to put an unnecessary burden of responsibility on enterprising men for acts which are immaterial; they should be relieved from such burdens, but held to a rigid financial accountability for acts that mislead the upright investor or stockholder, or defraud the public.

The first essential is knowledge of the facts, publicity. Much can be done at once by amendment of the corporation laws so as to provide for such publicity as will not work injustice as between business rivals.

The chief abuses alleged to arise from trusts are probably the following: Misrepresentation or concealment regarding material facts connected with the organization of an enterprise; the evils connected with unscrupulous promotion; overcapitalization; unfair competition, resulting in the crushing out of competitors who themselves do not act improperly; raising of prices above fair competitive rates; the wielding of increased power over the wage earners. Of course none of these abuses may exist in a particular trust, but in many trusts, as well as in many corporations not ordinarily called trusts, one or more of them are evident. Some of these evils could be partially remedied by a modification of our corporation laws; here we can safely go along the lines of the more conservative New England States, and probably not a little farther. Such laws will themselves provide the needed publicity, and the needed circumstantiality of statement. We should know authoritatively whether stock represents actual value of plants, or whether it represents brands or good will; or if not, what it does represent, if anything. It is desirable to know how much was actually bought, how much was issued free; and to

whom; and, if possible, for what reason. In the first place, this would be invaluable in preventing harm being done as among the stockholders, for many of the grossest wrongs that are perpetrated are those of promoters and organizers at the expense of the general public who are invited to take shares in business organizations. In the next place, this would enable us to see just what the public have a right to expect in the way of service and taxation. There is no reason whatever for refusing to tax a corporation because by its own acts it has created a burden of charges under which it staggers. The extravagant man who builds a needlessly large house nevertheless pays taxes on the house; and the corporation which has to pay great sums of interest owing to juggling transactions in the issue of stocks and bonds has just as little right to consideration. But very great hardship may result to innocent purchasers; and publicity by lessening the possibility of this would also serve the purpose of the State.

Where a trust becomes a monopoly the State has an immediate right to interfere. Care should be taken not to stifle enterprise or disclose any facts of a business that are essentially private; but the State for the protection of the public should exercise the right to inspect, to examine thoroughly all the workings of great corporations just as is now done with banks; and wherever the interests of the public demand it, it should publish the results of its examination. Then, if there are inordinate profits, competition or public sentiment will give the public the benefit in lowered prices; and if not, the power of taxation remains. It is therefore evident that publicity is the one sure and adequate remedy which we can now invoke. There may be other remedies, but what these others are we can only find out by publicity, as the result of investigation. The first requisite is knowledge, full and complete.

LABOR.

I call the attention of the Legislature to the reports of the State Board of Mediation and Arbitration, of the Commissioner of Labor Statistics and of the State Factory Inspector. During the past year very valuable labor measures have been enacted into laws, and they are well enforced. I am happy to say that in speaking of labor legislation I can talk mainly of performance—not of promise. Additional legislation will undoubtedly from time to time become necessary; but many vitally needed laws have already been put upon the statute books. As experience shows their defects, these will be remedied. A stringent eight hour labor law has been enacted. This is working well as a whole.

In nothing do we need to exercise cooler judgment than in labor legislation. Such legislation is absolutely necessary, alike from the humanitarian and the industrial standpoints; and it is as much our duty to protect the weaker wage workers from oppression as to protect helpless investors from fraud. But we must beware above all things of that injudicious and ill-considered benevolence which usually in the long run defeats its own ends. To discourage industry and thrift ultimately amounts to putting a premium on poverty and shiftlessness. It is neither of benefit to the individual nor to society needlessly to handicap superior ability and energy, and to reduce their possessor to the level of work and gain suited for his less able and energetic rivals.

There have been a large number of strikes for increase of wages during the past year. The fact that these strikes were not against a reduction, but for an increase, is due to the prosperous condition of the country and State generally. The services of the present excellent Board of Mediation and Arbitration have been in almost constant demand, and they have been gratifyingly successful. The

number of controversies amicably adjusted directly and indirectly through its influence, has been greater than that during any year since its creation. The work of mediation — that is, of settling the dispute before it has reached an acute stage — is even more important and successful than that of arbitration proper, after the strike is once on. This being so, it would be well to enact legislation which would compel parties to labor disputes to notify the Board of impending trouble, or of strikes and lockouts.

The experiment of publishing a quarterly bulletin by the Bureau of Labor Statistics has worked excellently and the bulletin should be continued and improved. I suggest that it would be well to define by statute the questions that may legally be asked of manufacturers by this Bureau. Abuses have occurred in connection with the employment offices in the larger cities, which are now allowed to violate the law with impunity, the power of punishment lying with the local authorities. It would be well to require the keeper of any employment office to procure a license from the State, as in Minnesota and other States. This license should be granted on the payment of a substantial fee, and the business would thus be restricted to responsible parties and kept under the control of the State administration.

The measures suggested in my message of last year* and carried into effect by legislation, increasing the number of factory inspectors, and requiring a license for all shops and rooms where garments are made for general employers, have already greatly increased the efficiency of the Factory Inspector's Department, and enlarged its service to the public. Too little time has elapsed since the sweatshop law went into effect, in September, to give a full report of its benefits. As illustrating its efficiency in interfering with sweatshops I may mention that so far under its pro-

* *Ante*, p. 7.

visions 4,942 licenses have been granted and 918 refused. These 918 cases represent the sweatshops which would now have been in operation save for this law and for the way it has been enforced.

I shall not ask for any increase of the number of salaried inspectors this year, but I recommend that the power be given to the Governor and to the Factory Inspector to name, whenever necessary, unsalaried inspectors to undertake special investigation or aid the Department at special times. Such assistance would increase the efficiency of the work of the Department without imposing added burdens upon the State.

I urge that the Legislature give particular attention to the need of reform in the laws governing the tenement houses. The Tenement House Commission of 1894 declared that, in its opinion, the Tenement House Laws needed to be revised as often as once in five years, and I am confident that the improvements in building materials and construction of tenements, and the advance in sanitary legislation all demand further modification of existing laws. Probably the best course to follow would be to appoint a commission to present a revised code of Tenement House Laws.[6]

Owing to defects in the drug clerks' bill presented last year, I was unable to sign it. I am, however, in hearty sympathy with the objects sought in the bill. I trust that a satisfactory bill may be presented this year, and shall be glad to give such a bill my approval.[7]

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[6] As to a tenement house commission, see the Governor's special message of April 2. Chapter 279, passed April 4, authorized the Governor to appoint a tenement house commission to examine the subject of tenement houses in cities of the first class, and report to the Legislature at its next session. The commission presented its report to the Legislature on the 25th of February, 1901. See Assembly Document, 1901, No. 76.

[7] Chapter 453, passed April 14, regulated the working hours of pharmacists and drug clerks in cities of one million or more inhabitants. See 1899, veto of May 27, and note 27, *ante*, p. 56.

The liability of employers to their employees is now recognized in the laws of most of the great industrial communities of the world. While employers ought not to be burdened to such an extent as to endanger ordinary business transactions; yet the State should, so far as possible, protect those employees engaged in dangerous occupations and should see that every reasonable provision is taken to guard their rights.[8]

NATIONAL GUARD AND NAVAL MILITIA.

I call attention to the report of the Adjutant General on the National Guard and Naval Militia of the State. The new code has worked great improvement. In some matters of organization, notably in reference to the detail of line officers to serve for a time in staff positions, the organization of the National Guard of New York is ahead of the organization of the United States Army.

The Spanish war had resulted in great disorganization of the Guard and an immense amount of work had to be done to re-establish it upon an efficient basis. This has been done and the Guard has never been more efficient than at present. It is to be hoped that in a comparatively short time the National Government will be in a position to arm the Guard with the rifle used in the regular army.[9]

During the past year the Guard has been called upon to furnish New York's quota of officers for service in the volunteer regiments of the army. All of the officers thus recommended were men who had served in the Spanish war. In making the recommendations the colonels of the

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[8] An act was passed in 1902, chapter 600, "to extend and regulate the liability of employers to make compensation for personal injuries suffered by employees." See also an act passed in 1906, chapter 657, relative to actions for personal injuries sustained by employees of railroad corporations. See also the Constitutional amendment, article 12, section 1, adopted in 1905, authorizing legislation for the protection of employees on public works.

[9] As to change of arms of National Guard, see 1899, note 7, *ante*, p. 15.

fifteen volunteer regiments sent into the service by New York were directed to submit the nominations of the three best men in each of their regiments for the volunteer appointments, the recommendations being based upon youth, character, fitness, intelligence and demonstrated ability to command. In addition recommendations were sought from other officers who had special knowledge of the personnel of the New York volunteers, and the records of the various candidates were critically examined. The report sent to the Secretary of War was based solely upon the records of the officers, no attention being paid any other considerations whatsoever save those of military fitness. Most of those thus recommended were appointed by the President. The rank and file of the Guard had within the year sent hundreds of men into the regular and volunteer army gathered for service in the Philippines.

During the summer of 1899 the first steps have been taken to give the State troops practical work in the field. Regiments were sent to the State Camp at Peekskill and from that point were given marches in the neighborhood of several days' duration with field equipment only. The State Camp at Peekskill when originally constructed represented a great advance, for work in the camp was much better than work in the armory. It no longer stands as it did, for it is of special advantage only to armory trained troops; but it can still be made of much use. Probably it could best be used for the annual instruction of all of the officers and non-commissioned officers; but it might be a hardship to impose such extra duty on men most of whom are actually engaged in earning their own living. At any rate, the regiments should receive practical instructions by actual marching, cooking, camping, sanitation, outpost duties and field exercises over rough country. Soldiers must be able to take care of themselves under the conditions of a campaign, and this they cannot learn unless they cook their own food, pitch their own tents, and perform for

themselves all the other duties incident to their profession. The mortality in the Spanish war shows how infinitely less dangerous to the lives of the soldiers are the bullets of the enemy than diseases caused by bad sanitation and failure to understand how to cook, and live in the open.

Furthermore, it is very much to be wished that means could be taken to provide the most ample facilities for rifle practice. The United States must depend upon its citizen soldiery in the event of a great war. If the men already know how to march, to take cover, to live in the open and to shoot, and always provided that they understand the absolutely vital importance of discipline and obedience to orders, then the technical training can be mastered with comparative ease by volunteers as intelligent, as brave and as self-reliant as those who make up American armies. It would be a good thing if there were a rifle range in every village of this State as there is in Switzerland. Moreover, it should be remembered that target practice proper is but the alphabet of the soldier's marksmanship. He should also practice assiduously under conditions as nearly as possible like those of actual warfare; "terrainschiessen," as it is called in the German army, is indispensable to effectiveness. In any event, every company of the National Guard should receive all possible encouragement in rifle practice. In a battle the only bullets that count are those that hit.[10]

The Naval Militia make a particularly valuable branch of the service. They deserve the highest praise for the way they do their difficult work. The drill that the Naval Militia receives is most practical in character. It is greatly to be desired that the Second Naval Battalion should have an armory.

Every opportunity should be given to, and should be sought by, the officers and men of the National Guard and

[10] Chapter 746, approved May 3, contained several amendments to the Military Code, relating chiefly to organization and matters of detail.

Naval Militia, seriously to study and master both the theory and practice of their temporary profession. One of the officers of the Guard is going abroad with the special purpose of studying the relation of the regulars, volunteers and militia in England; special studies of this kind have great value. In addition we should know the methods of administration and of field practice which mark the most efficient modern armies.

FISHERIES, FOREST AND GAME COMMISSION.

Under this Commission great progress has been made through the fish hatcheries in the propagation of valuable food and sporting fish. The laws for the protection of deer have resulted in their increase. Nevertheless, as railroads tend to encroach on the wilderness, the temptation to illegal hunting becomes greater, and the danger for forest fires increases. There is need of great improvement both in our laws and in their administration. The game wardens have been too few in number. More should be provided. None save fit men must be appointed; and their retention in office must depend purely upon the zeal, ability and efficiency with which they perform their duties. The game wardens in the forests must be woodsmen; and they should have no outside business. In short, there should be a thorough reorganization of the work of the commission. A careful study of the resources and condition of the forests on State land must be made. It is certainly not too much to expect that the State forests should be managed as efficiently as the forests on private lands in the same neighborhoods, and the measure of difference in efficiency of management must be the measure of condemnation or praise of the way the public forests have been managed.

The subject of forest preservation is of the utmost importance to the State. The Adirondacks and Catskills should be great parks kept in perpetuity for the benefit and enjoyment of our people. Much has been done of late

years towards their preservation, but very much remains to be done. The provisions of law in reference to sawmills and wood pulp mills are defective and should be changed so as to prohibit dumping dye-stuff, sawdust or tanbark in any amount whatsoever into the streams. Reservoirs should be made; but not where they will tend to destroy large sections of the forest, and only after a careful and scientific study of the water resources of the region. The people of the forest regions are themselves growing more and more to realize the necessity of preserving both the trees and the game. A live deer in the woods will attract to the neighborhood ten times the money that could be obtained for the deer's dead carcass. Timber theft on the State lands is, of course, a grave offence against the whole public.

Hardy, outdoor sports, like hunting, are in themselves of no small value to the national character and should be encouraged in every way. Men who go into the wilderness, indeed men who take part in any field sports with horse or rifle, receive a benefit which can hardly be given by even the most vigorous athletic games.

There is a further, and more immediate and practical, end in view. A primeval forest is a great sponge which absorbs and distills the rainwater; and when it is destroyed the result is apt to be an alternation of flood and drought. Forest fires ultimately make the land a desert, and are a detriment to all that portion of the State tributary to the streams through the woods where they occur. Every effort should be made to minimize their destructive influence. We need to have our system of forestry gradually developed and conducted along scientific principles. When this has been done it will be possible to allow marketable lumber to be cut everywhere without damage to the forests — indeed, with positive advantage to them; but until lumbering is thus conducted, on strictly scientific principles no less than upon principles of the strictest honesty toward

the State, we cannot afford to suffer it at all in the State forests. Unrestrained greed means the ruin of the great woods and the drying up of the sources of the rivers.

Ultimately the administration of the State lands must be so centralized as to enable us definitely to place responsibility in respect to everything concerning them, and to demand the highest degree of trained intelligence in their use.

The State should not permit within its limits factories to make bird skins or bird feathers into articles of ornament or wearing apparel. Ordinary birds, and especially song birds, should be rigidly protected. Game birds should never be shot to a greater extent than will offset the natural rate of increase. All spring shooting should be prohibited and efforts made by correspondence with the neighboring States to secure its prohibition within their borders. Care should be taken not to encourage the use of cold storage or other market systems which are a benefit to no one but the wealth epicure who can afford to pay a heavy price for luxuries. These systems tend to the destruction of the game; which would bear most severely upon the very men whose rapacity has been appealed to in order to secure its extermination.

The open season for the different species of game and fish should be made uniform throughout the entire State, save that it should be shorter on Long Island for certain species which are not plentiful, and which are pursued by a greater number of people than in other game portions of the State.[11]

BUILDING AND LOAN ASSOCIATIONS.

Ample occasion exists for some modification of the statutes relating to the corporations popularly known as build-

[11] A revised forest, fish and game law, chapter 20, was enacted at this session. Section 141 (possession of fish and game) as amended by L. 1902, chap. 194, was sustained in People v. A. Booth & Co. (1905) 105 App Div. 184.

ing and loan associations. A law which authorizes the formation of associations vested with extraordinary powers and possessing special exemptions, because they are designed to encourage thrift and to enable workingmen to provide homes for their families, urgently needs revision when under it there occur such instances of extravagance and mismanagement, if not of actual fraud, as have recently been brought to public attention. If there can be degrees in fidelity, the highest should prevail in the discharge of those trusts in which the interests at stake are those of the poorer and more helpless members of society. Reckless real estate speculations, arbitrary amendment of by-laws without the consent of shareholders, whereby the contracts between associations and their members are changed, and excessive expense accounts for salaries, luxurious offices, etc., not to charge practices which in some cases can be reconciled with no purpose except dishonesty, are among the abuses disclosed during the year by the work of the Banking Department. With this state of facts established, argument is not required to place upon the Legislature the imperative obligation to revise the law governing these associations so as to make commission of wrongs by their management less easy, and to lodge with the Superintendent of Banks adequate power to deal promptly and effectively with associations whose directors may attempt to transcend the bounds of safety and honesty.

An evil of growing proportions is the incorporation of stock companies with titles suggestive of powers to which their certificates make no claim, and which they cannot possess under the general corporation law. Allied to it is the assumption of names similarly objectionable by partnerships or individuals operating as private bankers, and also the establishment of offices in this State by foreign corporations whose names indicate them to be moneyed corporations. The employment of such titles is certainly misleading, and it is readily conceivable that it might prove

mischievous. It is plain that it should not be permitted to any person or firm or to any company having but an insignificant capital and organized to do merely an agency business, or to any foreign corporation maintaining an office in New York for the transaction of non-prohibited business, to have the name which conveys the idea that it is a banking institution; and the general corporation act should be amended to inhibit it. The matter is discussed more fully in the annual report of the Superintendent of Banks, to which I ask the attention of the Legislature, with such action as will prevent a continuation of the evil.[12]

HORTON BOXING LAW.

I call the attention of the Legislature to the so-called Horton Boxing Law now on the statute books, and recommend its repeal. If this law merely fulfilled the expectations of its original advocates, and if it were executed as it was executed during the first year it was enacted, there would be no need of this recommendation. Rough, vigorous pastimes are excellent things for the nation, for they promote manliness, being good in their effects not merely upon the body, but upon the character, which is far more important than the body. It is an admirable thing for any boy or young man whose work is of a sedentary character to take part in vigorous play, so long as it is not carried to excess, or allowed to interfere with his work. Every exercise that tends to develop bodily vigor, daring, endurance, resolution and self-command should be encouraged. Boxing is a fine sport; but this affords no justification of prize fighting, any more than the fact that a cross country run

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12 An act was passed, chapter 704, which amended the general corporation law, section 6, by prohibiting the formation of a corporation under the laws of this State with the word trust, banking, assurance, guaranty, savings, investment or loan as a part of its name, except a corporation formed under the banking law or the insurance law. The prohibition already included banks, insurance, indemnity, guarantee and benefit corporations.

or ride on a wheel is healthy justifies such a demoralizing exhibition as a six-days race. When any sport is carried on primarily for money—that is, as a business—it is in danger of losing much that is valuable, and of acquiring some exceedingly undesirable characteristics. In the case of prize fighting, not only do all the objections which apply to the abuse of other professional sports apply in aggravated form, but in addition the exhibition has a very demoralizing and brutalizing effect. There is no need to argue these points. They are expressly admitted in the Horton Law itself. Moreover the evils are greatly aggravated by the fact that the fight is for a money prize, and is the occasion for unlimited gambling and betting. As the law is construed by the police department of New York at present, it permits prize fights pure and simple. If as is alleged the police are technically justified in so construing the law, it only renders it the more necessary that the law should be repealed. However proper it may have been in its intent and as originally construed and administered, the gross abuses in its present administration, make its existence on the statute books of the Empire State an offense against decency.

Athletic sports are excellent when treated as what they should be, that is as healthy pastimes; they become harmful if indulged in to excess, and if their importance in relation to the serious work of life is misestimated; and still more harmful when twisted into adjuncts of brutality or gambling.[13]

AMENDMENT TO THE VAGRANCY LAW.

Crime against a woman is peculiarly abhorrent, not only because she is weaker, but because she has no direct voice in the government. There should be no sentimentality about

[13] The so-called Horton boxing law was passed in 1896, chapter 301, amending section 458 of the Penal Code. It contained a proviso permitting sparring exhibitions with gloves of a specified weight in buildings owned or leased by domestic incorporated athletic associations. The section was amended in 1900, chapter 270, by omitting this proviso.

excusing a female criminal who is as guilty as a male criminal; but an even severer punishment should be meted out to those who commit crimes of brutal violence against women and children than to those who commit them against men. In the same way, it is greatly to be desired that our laws should be changed so as to provide for the punishment of men who profit by the commission of immoral acts by women. At present the wretched women are punished and the men who make their living by their infamy may go free. Such a condition of affairs is intolerable in the eyes of every thinking person. This kind of immoral conduct is punished under the Vagrancy Law, which should be amended as it has recently been amended in England, so as to do away with such unjust discrimination.[14] In connection with this matter I call your attention to the desirability of completing the work of the new Bedford Reformatory which is especially designed for dealing with girls and women who have fallen, but whom there is a chance to redeem.[15]

THE COMPLETION OF THE REVISION OF THE STATUTES BY THE LEGISLATURE.

A commission to revise the statutes with a view of condensing, combining and harmonizing the subjects of general legislation was created in 1889. Several general laws which were originally proposed have been rendered unnecessary by the reason of the changes of the constitution of 1894, and several additional subjects of general legislation have been suggested. The revision of the Code of Civil Procedure was not originally contemplated, but has now become a part of the work of the Commission. A large

[14] The Governor's suggestion was embodied in chapter 281, passed April 5, which amended section 887 of the Code of Criminal Procedure by adding a subdivision 9, intended to provide punishment for the offenses described in the message. Offenders against its provisions were declared to be vagrants.

[15] Chapter 288, passed April 6, made provision for completing the reformatory for women at Bedford in Westchester county.

number of the bills advocated by the Commission have become laws and some have been submitted but have not passed. During the winter it is intended that bills will be presented amending the general laws by incorporating them into various general statutes passed since those laws were enacted for the double purpose of bringing the plan of revision down to date and codifying under proper heads various independent statutes which can fairly be incorporated in an existing general law. It has been the custom heretofore to refer these bills either to the committee on judiciary or the committee on codes, but it is doubtful whether, if the numerous other bills which come from individual members are referred to these committees, such careful attention can be given to the bills of the Statutory Revision Commission as their importance warrants.

I beg leave to respectfully suggest the appointment of a special committee in each House, or a special joint committee, to take charge of these revision bills. The attention to the various measures which the Statutory Revision Commission has prepared, will greatly facilitate the work of closing up the Commission, which ought to be done during the present year. I recommend that steps be taken to close the Commission during the year.[16]

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[16] A resolution was adopted by the Assembly on the 26th of January, providing for the appointment of a committee of seven "to which shall be referred all the codification bills prepared by the Statutory Revision Commission." The committee was appointed on the 1st of February. The Senate did not appoint a similar committee, but on the 6th of April, the last day of the session, a joint committee was appointed composed of three members of the Senate and five members of the Assembly, "to consider the various bills prepared by the Statutory Revision Commission now pending before the Legislature, and report their conclusions to the next Legislature." Expenditures by the committee were limited to $10,000. For the report of this committee, see 1901, Assembly Document, No. 71.

The Statutory Revision and the Code Commissions were abolished in 1900, by chapter 664, which took effect on the 31st day of December of that year.

See the act of 1904, chapter 664, which created a board of statutory consolidation with powers similar to those conferred on the Statutory Revision Commission.

DEPARTMENT OF THE COMPTROLLER.

The office of the Comptroller shows a balance on hand in the treasury on the first day of October, 1898, of $3,973,804.45. The receipts from all sources during the fiscal year ending September 30, 1899, were $25,837,136.19, making a total receipt, with the balance of last year, of $29,810,941.37. The payments for all purposes during the fiscal year were $25,306,126.63, leaving a balance in the treasury of $4,505,814.74. The tax rate for the fiscal year ending October 1, 1899, was 2.49 mills. The present valuation of the state is $5,076,396,824. The amount received for corporation and organization taxes was $2,741,318.05. The amount in 1898 was $2,497,247.05, showing an increase during the fiscal year of $244,071. The amount received for tax on inheritance during the fiscal year was $2,194,612.24, being an increase over the last fiscal year of $197,402. The amount received from the Excise Department was $4,231,278.55, an increase of $15,417.63, over the last preceding year.

Attention is called to the increasing payments from transfer tax receipts by reason of special legislative enactments providing for the pay of assistants to surrogates and district attorneys, in addition to the fees allowed by the act itself to county treasurers and the comptroller of the city of New York for receiving this tax and remitting it to the State Treasury. The counties of Erie, Kings, Monroe, New York, Oneida, Onondaga, Queens, Suffolk, Ulster and Westchester have now these extra assistants at an aggregate cost for salaries and expenses each year of $36,940 payable from this tax. While admitting that this law has increased the labors of surrogates somewhat, it has not increased them to the extent of generally requiring assistants. I do not believe that any special provision should be made for additional help except in counties which have paid to the State for the past five years an average transfer tax of at least $50,000.

I recommend the repeal of all the acts giving district attorneys transfer tax assistants, for the reason that the assistants do little or nothing to earn the compensation therein allowed, and that their employment is therefore a useless expenditure of public money.

The transfer tax act provides that county treasurers and the Comptroller of the city of New York shall receive a fee of 5 per cent. on the first $50,000 collected; 3 per cent. on the second $50,000, and 1 per cent. upon all additional sums each year for receiving this tax and remitting it quarterly to the State Treasury. Their only duty, in addition to this, consists in issuing duplicate receipts to the executors for the payment of this tax, and making a quarterly report to the State Comptroller, and the payment of appraisers' fees and other legal disbursements. All the county treasurers retain this fee or commission for their own use and benefit, except in the county of Monroe, where it is turned into the county treasury. As a rule these officers take little or no interest in the enforcement of the law, and do practically nothing to warrant their receiving this large special compensation. In Erie county the fees formerly were paid into the county treasury, but the statute was amended recently restoring them to the treasurer. During the last fiscal year the amount of fees thus paid to county treasurers and the comptroller of New York city aggregated $67,425.06. Of this amount the comptroller of New York city received $15,975.83.

I believe that these fees should either go to the county, or that the aggregate amount allowed any official should be limited to a reasonable sum. At least $100,000 should be saved to the State annually by properly curtailing the expenditures payable from this tax.

SECRETARY OF STATE.

Originally and in the early history of the State, corporations were created by special acts of the Legislature. They were limited as to time, and as terms of existence would

expire, legislative action was necessary to continue their existence.

General statutes were afterwards enacted providing for the formation of corporations without resort to the Legislature.

Notwithstanding these general laws, the Legislature has continued to create corporations by special act, granting powers not given by the general laws.

Section 6 of the general corporation law prohibits the filing and recording in any office for the purpose of effecting incorporations of a certificate of incorporation of a proposed corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive.

By section 2411, Code of Civil Procedure, a petition to a court for the change of the corporate name of a domestic corporation must have annexed thereto a certificate of the Secretary of State that the name proposed is not the name of any other domestic corporation or a name which the Secretary of State deems so nearly resembling it as to be calculated to deceive.

To enable the Secretary of State to comply with the above provisions, the names of all domestic corporations should be on file in his office, alphabetically arranged, just as the names of all corporations are, which are incorporated under the general statutes.

In all cases where a corporation is created by special act a clause should be contained in the act requiring the filing and recording in the Secretary of State's office of a certified copy of such special act. The effect of this would be to bring the names of all domestic corporations, except banking and insurance corporations, upon our general index.

The Secretary of State has paid to the State Treasurer during the past fiscal year, for the benefit of the State $557,460.25, and the number of new corporations, companies increasing their capital stock and amount of increased capital have shown a large gain over preceding years.

ATTORNEY GENERAL.

I call your particular attention to the report of the Attorney General, which will be handed you in a few days, and the excellent showing it makes for that office. I cordially concur in what he will say as to the advisability of having all laws take effect at some definite time, say the first of September, so as to give opportunity to every one to know that they are on the statute books. Of course exceptions will be made in cases where emergencies exist.

SUPERINTENDENT OF PRISONS.

The Superintendent calls attention to the excellent working of the principle of indeterminate sentence for maximum and minimum limits fixed by the court, the prison parole board being allowed to parole under supervision any prisoner at any time after the expiration of the minimum term. He recommends that all prisoners sentenced for a first offence for felony, save of course murder and arson, be sentenced to indeterminate terms. There should be a separate prison for the confinement and execution of condemned prisoners.

STATE COMMISSION OF PRISONS.

Under the present laws none of the products of our own prisons are put upon the open market to compete with the products of free labor; but the products of convicts of other States and countries are brought into this State and add in competition with the products of our free labor. As under the decisions of the courts the State is powerless to prevent this, it is to be wished that there could be national legislation on the subject. The present system is furnishing reasonable employment to our own convicts, and the heads of State institutions must see that there is full compliance with the laws requiring them to purchase from the prisons goods used by their departments and made in the prisons.

A very gratifying feature of the present prison laws of this State is the rapid diminution in the population of the prisons, the penitentiary population having shrunk from 4,600 in 1895 to but little over 2,200 in 1899.

STATE ENGINEER AND SURVEYOR.

The work of the State Engineer and Surveyor has been executed with signal ability and fidelity during the past year.

There has been considerable duplication of work by the National and State Governments in surveys. It certainly does not seem worth while that the State should have two separate departments doing surveying work. The Legislature last year declined to appropriate anything further for the State Land Survey, but did not abolish it. This creates a most undesirable state of affairs. It seems to me obvious that one department should do all the work, and I therefore recommend that the State Land Survey be put under the State Engineer and Surveyor, either as a separate bureau or otherwise, and that the work be done in his office, in which all the records of the State Land Survey should be placed.[17]

PUBLIC INSTRUCTION.

Under the Regents the institutions for higher education have continued to progress as in the past.

The Superintendent of Public Instruction reports the public schools of the State in a prosperous condition. They have been liberally maintained, and results have been satisfactory. Public interest in education is steadily increasing. The total expenditures for public schools during the year, directly or indirectly by the Department of Public Instruction, exceeded $29,000,000. What the State has done and is still doing along many lines to encourage professional

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[17] Chapter 661, approved April 25, abolished the office of superintendent of the State Land Survey.

training of teachers is bearing good fruit in the increasing number of professionally trained teachers in our schools, and in the development of a higher professional spirit. The Superintendent will recommend the establishment of a pedagogical department in Cornell University, and will call attention to certain equities which exist in the relations between the State and this institution in connection with State scholarships. A reasonable appropriation will be asked to carry the proposed plan into execution.

It has for a long time been the well nigh unanimous opinion of all those conversant with the history and practical working of the educational system of this State that the laws in reference to the official oversight and superintendence of education by the State government ought to be revised and unified for the sake of greater general efficiency, economy and entire harmony wherever there may be confusion and friction resulting from the needless overlapping of jurisdictions. That so vast a development as that which has come about in the work of instructing the children of this State should have been possible under the existing system is of itself a testimony to the wise and substantial way in which our predecessors laid the foundations of our educational organization.

The University of the State of New York, with its Board of Regents, is an institution peculiar to this commonwealth and one now venerable with its one hundred and sixteen years of history. Its exercise of authority over higher education has been of very great public service, and its methods and standards have exercised a wide influence for good upon those of other States. These facts have led to the adoption by the people of an amendment to the Constitution of the State whereby the University itself and its organization under a board of not less than nine Regents, has been provided and safeguarded in the organic law.*

* Const. 1894, Art. 9, § 2.

The Department of Public Instruction on the other hand, concerned chiefly with the supervision of all the free common schools of the State supported by public taxation, has grown to a vast importance; for the number of children of school age in the State has largely increased, and nine-tenths of them attend no other institution than the public school. The work done in both departments has been, in the main, excellent and needful to be done; they are amply worthy of the confidence and continued support of the people. But, that their work could be done better if the two systems were unified is a proposition hardly open to question. The problem has been not whether unification were desirable, but by what means this end was to be attained.

From the point of view of the public interests, it is neither desirable nor practicable merely to extend the jurisdiction of either department over the other. The University convocation at its annual meeting in July, 1899, requested the Governor to appoint a commission for the purpose of recommending a practicable plan of unification, and in accordance with this suggestion the following commission was appointed: Frederick W. Holls, Daniel H. McMillan, Judge Joseph F. Daly, William Kernan, Robt. F. Wilkinson, and the Secretary of the Board of Regents[a] and the Assistant Superintendent of Public Instruction.[b] All were men of the highest standing, of trained capacity, and specially interested in the whole subject. I cannot too heartily thank them for their invaluable and wholly disinterested labor for the public welfare.

This commission, after careful consideration, has arrived at suggestions embodied in a report suggesting statutory changes which, if adopted by the Legislature, will give effect to the system which they recommend. What they propose is the creation of a Department of Education, in-

[a] Melvil Dewey.

[b] Danforth E. Ainsworth.

cluding both the University and the Department of Public Instruction, of which a single officer, known as the Chancellor of the University, shall be the responsible executive and administrative head. The University is, of course, continued, and has its oversight extended to cover the entire field of education, so that its real authority and opportunity for public service will be much increased.

The plan proposed is simple, effective and wholly free from political or partisan considerations. It deserves the cordial support of all friends of public education, and this means of every patriotic citizen of the State.

It is impossible to exaggerate the importance of the interests involved or the importance of considering them solely from the point of view of the general welfare of the State.[18]

DEPARTMENT OF EXCISE.

The Excise Department has apparently been most carefully and judiciously managed and the work of that department commends itself to the Legislature.

The net balance for the fiscal year in this department is $12,582,248.72, of which $4,231,278.55 goes to the State, the balance being distributed among the cities and towns of the State. The expense of this department during the fiscal year was $274,862.10, and at the end of the fiscal year there was a balance on hand over and above expense of $91,723.92, showing that the most careful expenditure in the department has been the rule. There has been a decrease of between five and six thousand licensed places in the State, and each succeeding year shows a slight decrease in the

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[18] For a summary of the report of this commission, see the special message of January 10, transmitting the report to the Legislature.

The consolidation of the two departments, recommended by the Unification Commission of 1899, was substantially effected by an act passed in 1904, chapter 40, which among other things abolished the offices of secretary of the university and superintendent of public instruction, and created the office of state commissioner of education. The same act reorganized the Board of Regents.

number in force at the end of the fiscal year. The so-called slot machine gambling nuisance has greatly decreased, and has been driven from places where liquor is sold.

STATE COMMISSION IN LUNACY.

In this Department progressive improvement shows that the State Care system was wisely founded and must remain the permanent policy of the State. The care of the insane has bettered and the cost has lessened. The accommodations have been increased and improved and the annual increment of permanent cases, the ultimate cost to the State of each of which is computed at $5,000, has been diminished. While the reduction of cost of maintenance the past year from the per capita of $185.20 in 1898 to $178.42, in the face of a general advance in prices, and contrasted with $216 before the State Care Act, is satisfactory, it is of far more importance that the annual increase of patients in hospitals is steadily decreasing; in 1899 it was 529, in 1898, it was 634, in 1897 it was 733. These figures allow but one conclusion — better care of the insane. That conclusion is supported by the fact that 1,009 patients have been discharged fully recovered, and 921 others have sufficiently improved to allow their return to their homes.

STATE CHARITABLE INSTITUTIONS.

Great interests are involved in the administration of the State charitable institutions. During the past year a long stride forward has been taken in elevating the standard of supervision on the part of boards of managers. Wherever possible these boards of managers are now selected without reference to local demands or preferences and without reference to their politics. While there should be one or two representatives of the locality, the bulk should be men and women coming from other parts of the State, who realize that the institution is of State and not merely local consequence.

I call your attention to the desirability of repealing chapter 374 of the Laws of 1896, which permits courts to send female felons of mature age to "houses of refuge" for a period of not less than one year. This is contrary to the purpose with which these institutions were founded, and to chapter 632 of the Laws of 1899, which provides for a sentence of three years, with power of prior discharge by the board of managers. Houses of refuge are not proper places for felons of mature age, and moreover, the managers of these houses should, like the trustees of the Elmira Reformatory, be given the privilege of transferring to the prison authorities, under proper conditions, inmates who are found to derive no benefit from the discipline employed.[19]

COMMISSIONERS OF THE LAND OFFICE.

I call your attention to the desirability of allowing the Commissioners of the Land Office to grant leases with power of renewal for riparian lands. At present it is more than questionable whether such leases are valid, and unless the leases can be issued in this form, they are often useless. Where improvements of great value are made it seems probable that the land should be granted in fee; but where improvements are not made the State should certainly retain the fee.

CIVIL SERVICE COMMISSION.

A very great advance was made last year by the action of the Legislature in putting upon the books the present bill to secure recognition of merit in appointments to the civil service. Under this law the great bulk of the classi-

[19] Chapter 114, passed March 12, amended section 698 of the Penal Code, by adding a provision that "a woman between the ages of fifteen and thirty convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a State prison, may in the discretion of the trial court be sentenced to a House of Refuge or reformatory for women, to be there confined under the provisions of law relating to such house of refuge or reformatory."

fied offices are taken out of the domain of politics. There is need of an increased appropriation for the Civil Service Commission. Their salaries should at least be made equal to those of other commissioners.[20]

The civil service rules framed under the provisions of chapter 370, Laws of 1899, were promulgated on June 8th last. While the law and rules have been in operation for a period too brief to demonstrate their benefits to their fullest extent or to detect their defects, enough has been shown to prove their efficiency in carrying out the constitutional provisions. Examinations for all positions subject to them have been held in at least thirty cities so as to accommodate applicants in every part of the State. The increased attendance at these examinations indicates an appreciation of the relief from the double examinations under the previous law, which were costly and onerous to all, without any advantage to the public interests. The provisions of law requiring pay-rolls to be certified by the State or Municipal Commissions respectively have worked well, both in securing strict compliance with the law, and in obtaining accurate rosters of those in service. The same may be said of the larger powers of supervision of the work of municipal commissions given to the State Commission, securing uniformity in methods and procedure and the application of the merit system in all the cities of the State, a result never before reached. The State Commission should have larger means at its disposal for frequent inspection of the city service and concurrent advice and instruction to such inexperienced officials as may need it.

RAILROAD COMMISSION.

Important progress has been made in the elimination of grade crossings, the commission exercising its powers with tact and judgment. I recommend that the Legislature pro-

[20] By chapter 66, passed March 1, the salary of State civil service Commissioners was increased from $2,000 to $3,000.

vide for the continuance of this work.[21] Of recent years the Legislature has given the board proper power, and in consequence it has been enabled to do excellent work.

HEALTH OFFICER AND QUARANTINE.

The Health Officer of the port of New York and the Quarantine Commissioners find their work sadly handicapped for lack of funds. This branch of public service has in the past few years, by reason of the improved methods of sanitation, been of the greatest public benefit; but sufficient funds have not heretofore been placed at their disposal to acquire the best results. The port of New York is one which cannot be too carefully guarded, and the very scientific methods now used by those who have charge of this important branch of the State government require additional and increased appropriations. I trust this matter will receive your early and careful attention.[22]

SELF-SUPPORTING OFFICES.

The offices of Secretary of State, Railroad Commission, Banking and Insurance Departments are all self-supporting — more than paying their own expenses.

DEPARTMENT OF AGRICULTURE.

The work of this Department has steadily increased until it is now double what it was six years ago, while there has been but little increase in the appropriation. To some extent the work of this department is duplicated or clashes

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[21] Chapter 418, appropriated $100,000 to be expended under the provisions of the grade crossings law of 1897, chapter 754.

[22] The quarantine laws were revised at this session, by chapter 268, passed April 2, which contained numerous amendments to the Public Health law of 1893, chapter 661, including articles 6 and 7, relating respectively to quarantine and the health officer at the port of New York.

Chapter 393, approved April 12, appropriated $80,000 for the quarantine commission "for reclaiming land and erecting a building for cabin passengers at Hoffman's Island, New York."

Appropriations for general quarantine purposes were made by the appropriation act, chapter 418, and the supply bill, chapter 419.

with that of the State Board of Health. The Assembly Committee appointed to consider the subject of tuberculosis in cattle will deal with this matter, at least in part, in their report to the Legislature.[23]

I call your attention to the special necessity of taking all possible steps to prevent the adulteration of food.[24]

During the year eighteen hundred and ninety-nine the property of the State Agricultural Society at Syracuse, where the annual State fair is held, was transferred to the State, and I recommend that the State now take under its control the management of the State Fair.[25]

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[23] For the report of the special investigating committee on tuberculosis, and other diseases of animals, see Assembly Document, 1900, No. 43.

[24] Chapter 76, passed March 6, and chapter 559, approved April 20, amended the agricultural law, relative to penalties for watering milk furnished to co-operative butter and cheese factories.

Chapter 79, passed March 7, amended the agricultural law, relative to license fees for selling concentrated commercial feeding stuffs.

Chapter 101, passed March 12, amended the agricultural law, relative to the sale of adulterated milk or cream.

Chapter 534, approved April 19, amended the agricultural law, relative to the prohibition against the manufacture or mixing of animal fats with milk, cream or butter.

Chapter 544, approved April 19, amended the agricultural law, relative to tests for ascertaining the amount of fats in milk.

Chapter 101 was sustained in People v. Hills (1901), 64 App. Div. 584.

Chapter 534, amending section 27 of the agricultural law, was held unconstitutional in People v. Biesecker (1901), 169 N. Y. 53.

[25] Chapter 346, approved April 10, amended the agricultural law, by adding an article 10, in relation to State fairs. The act ratified a conveyance to the State by the New York State Agricultural Society of property owned by the society in the town of Geddes in the county of Onondaga, which conveyance was by a deed dated July 28, 1899. The act placed the State fair under the management and control of a commission consisting of eleven members, including the Lieutenant-Governor and the Commissioner of Agriculture ex officio, and nine persons to be appointed by the Governor, three of whom were to be respectively members of the New York State Grange, New York State Association of County Agricultural Societies, and the Union Association of Agricultural Societies. The article also contained provisions relative to the administration of the State fair.

Chapter 419, made appropriations for liquidating the indebtedness of the New York State Agricultural Society, which had been assumed by the State in the transfer of the society's property to the State and the establishment of a permanent State fair.

The excellent education work done by the Farmers' Institutes deserves your cordial support; it has had a real and marked effect in bettering the condition of the farming communities where it has been most developed.[26]

STATE ARCHITECT.

Nowhere has the increased efficiency in the State service been more marked than in the office of the State Architect. This office has carried on the work of preparing plans and specifications for the various new buildings and repairs and alterations to existing buildings for which appropriations have been made by the Legislature. With a few unimportant exceptions all this work is now under contract notwithstanding the great increase in price of building materials during the current year and since the appropriations were made. It is recommended that the State Architect be given an additional appropriation to increase the engineering force of his office so as to enable him to ascertain if it be practicable to secure greater economy in various directions, such as in the mechanical methods of using coal in State institutions, to inquire into the general subject of water supply and sewerage of the various State institutions, and to formulate practical suggestions for the amelioration of existing defects and to pay the salaries of building inspectors now paid out of the appropriations for buildings.[27]

SUPERINTENDENT OF PUBLIC BUILDINGS.

I call special attention to the efficiency and economy in the management of the Department of Public Buildings during the past year. The service has been much improved

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[26] The appropriation act, chapter 418, contained an item of $20,000 for the Farmers' Institutes.

[27] The supply bill, chapter 419, appropriated $3,000 to pay the salaries for six months of three additional expert engineers in the office of the State Architect.

and notwithstanding the fact that the building has been thoroughly renovated throughout and several of the departments enlarged, the cost of management has been very much decreased. No useless employees have been retained, while those who have been continued have been made clearly to understand that the standard of efficiency was the only one which was required in the fulfillment of their duties.

NEW YORK CITY CHARTER.

I recommend that the Governor be empowered to appoint a commission to deal with the question of remodeling the New York charter in order to remedy the defects made evident by its workings during the last two years.[28]

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[28] A Greater New York charter commission was created by chapter 465, approved April 16, to be composed of fifteen members appointed by the Governor. The commission was required to present its report not later than December 1, 1900, including any bill or bills intended to carry the commission's recommendations into effect. The commission was appointed on the 25th of April, 1900, and in connection with the appointment the Governor filed the following memorandum:

"MEMORANDUM filed with the appointment of the commission to revise the charter of the city of New York, created by chapter 465 of the Laws of 1900.

"The act under which this commission is appointed is An Act providing for the revision of the Greater New York Charter. The law does not impose any restrictions on the freedom of the Commissioners; and I desire that they exercise their judgment with entire liberty. Of course the law contemplates the revision of the existing Charter in the light of experience. It does not contemplate the framing of a new Charter. Nothing is easier than to make a city charter which is not to be enacted into law, and nothing is harder than to frame one which is to be enacted into law; that is to secure general assent to any new instrument which affects vitally important interests. In the existing charter there are many points where experience has shown amendment to be absolutely necessary; and on all such points favorable action can surely be secured. I am confident that the commission now appointed will strive to make its suggestions of such a character, and to present them in such a form, that favorable action by the Legislature may reasonably be expected to follow their deliberations. I shall venture specially to call the attention of the commission to one or two matters; notably to the question of New York water supply, in order that effectual steps may be taken to remove all danger from the Ramapo or any similar scheme to exploit the city's needs of water in the interest of a private corporation."

For the commission's report, see 1901, Assembly Document, No. 40. An act was passed in 1901, chapter 466, containing a large number of amendments to the Greater New York charter.

POLITICAL ASSESSMENTS AND THE JUDICIARY.

I further recommend that legislation be passed at once prohibiting the payment by any candidate for judicial office, directly or indirectly, of assessments or contributions to political parties for campaign expenses.[29]

GOOD ROADS.

The movement to better the roads of the State should not be allowed to lag; it should be so directed as to be in the especial interest of the tiller of the soil.

PUBLIC PRINTING.

It may well be considered by you whether by the passage of an act establishing a State printing bureau, equipped with every modern device, the cost to the State of its printing might not be reduced. This item has become a large one in the State expenditure, and a trial of State ownership, if found to be economical, I would advise.[30]

THE PALISADES.

The State should sedulously preserve for its people the natural beauties within its limits. Great good has been done by the Niagara Falls Reservation, and its interests should be advanced in every way. I call the attention of the Legislature to the report of the Palisades Commission, which has my hearty approval. The Palisades should be preserved. They form one of the most striking and beautiful features of nature in the entire country, and their

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[29] An act passed in 1906, chapter 503, amending the Penal Code, in relation to crimes against the elective franchise, contained a provision that "no candidate for a judicial office shall, directly or indirectly, make any political contribution of money or other thing of value, nor shall any contribution be solicited of him."

[30] A State printing law was passed in 1901, chapter 507. It did not create a state printing bureau, but provided for state printing by contract to be made on behalf of the State by the Secretary of State, Comptroller and Attorney General.

marring and ruin should be a source not merely of regret, but of shame, to our people. New Jersey is in reality less interested in their preservation than we are, although they are in her territory, for their beauty can best be observed from ours.

There are two miles of the Palisades in the State of New York and ten in the State of New Jersey. No further riparian rights along their base should be granted, and I suggest that a Commission to represent the State of New York be appointed and that the Governor be empowered to request of the State of New Jersey to appoint a similar commission to serve with ours and endeavor to provide for joint action by the two States to secure the permanence of this splendid natural monument.[31]

PAN-AMERICAN EXPOSITION.

I particularly desire to call the attention of the Legislature to the Pan-American Exposition. This exposition will be a source of the utmost pride to the whole State, and all our citizens should feel an active concern in making it a greater success than anything of its kind ever held on this continent — second only to the great national expositions.

My attention has been called to the desirability of having at this Exposition a Department of Social Economy. Interesting and important as it is to exhibit the natural resources of the Americas and the products of their industries, it is no less important to present the life of the people themselves and to show their social institutions.

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31 A palisades commission was created by chapter 170, passed March 21, to be composed of ten members appointed by the Governor and Senate, five of whom were required to be residents of this State. The commission was authorized to take the necessary proceedings to establish a State Park along the west bank of the Hudson river, from the New Jersey line to Piermont Creek, near Piermont in Rockland county. The commission was to co-operate so far as practicable with a similar commission to be appointed in New Jersey. For further information relative to the palisades, see 1896, *ante* vol. 9, p. 735.

The industrial and social revolution, consequent upon the introduction of steam and electricity, has produced a new civilization, with many new problems yet unsolved, and new conditions to which we have only imperfectly adjusted ourselves. By providing for a Department of Social Economy at the Pan-American Exposition, much light may be thrown on these problems, and not a little may be done for the amelioration of social and industrial conditions.

The scope of this Department should be broad enough to include, for the several countries and peoples, a comprehensive presentation of their industrial, agricultural, commercial, economic, social and philanthropic conditions.

These subjects would be graphically represented by maps, charts and photographs, which would constitute an important and attractive exhibit. Such a presentation of conditions in Cuba, Porto Rico, Hawaii and the Philippines would be of special interest. These subjects might be further illustrated by a series of Congresses, in which experts would discuss topics of popular interest and of practical value.

The beginning of a new century would seem to be a peculiarly fitting time to gather up the results of investigation and experience in the preceding century by which to help the peoples of North and South America up to a higher plane, physical, mental and moral.

I am heartily in favor of the creation of such a department of the Exposition, and recommend that a sufficient appropriation be made by the Legislature to establish and successfully conduct it.

I commend the Exposition to your special attention, and hope you will aid it in every way.[32]

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[32] Chapter 230, passed March 26, 1900, amended the Pan-American Exposition act of 1899, chapter 36, relative to expenditures and other details of administration, but no provision was made for a department of social economy.

OVER-LEGISLATION.

Bills are continually passed providing for extraordinary repairs on the canals, for the erection of bridges and the like. It seems to me that there should be a blanket appropriation for all these repairs, and that the allotment of the money for the different places should be left to the discretion of the Superintendent of Public Works. I believe that this will result in a considerable saving to the State.

I again call the attention of the Legislature to the undesirability of cumbering our statute books with a mass of needless legislation. Of course, any legislation that is slipped through so as to evade public notice is noxious; but aside from this the mere fact of having on the statute books a large number of laws which, though not harmful, are of no particular benefit, is also undesirable. It is greatly to be desired that some plan for limiting private legislation should be adopted; a bill with this purpose was introduced last year.

I also again call the attention of the Legislature to the need of economy. There are many objects excellent in themselves upon which the State could with advantage spend money, were it not for the steady tendency to increase expense beyond the limit that can be afforded by the taxpayers.

THEODORE ROOSEVELT.

SPECIAL MESSAGES.

January 10. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 10, 1900.

I desire to call your attention to the matter of the preservation of the Palisades of the Hudson, a subject of very general interest, which has been under consideration for some time past, and have the honor to transmit herewith

reports of commissioners appointed to consider the question, together with a draft of a proposed bill, submitted by the commissioners for your consideration, and copies of correspondence and map.

THEODORE ROOSEVELT."

See Assembly Document, 1900, No. 11, including a report by the Commission appointed under the act of 1895, chapter 97, setting forth in detail the progress of the movement for the preservation of the Palisades, the efforts made by the Commission to secure an act of Congress making the Palisades and adjacent territory a National Park for military purposes, and recent action by the States of New York and New Jersey. The document also includes a report on the same subject by a committee representing the New York Society for the Preservation of Scenic and Historic Places and Objects appointed at the request of the Governor. The report is accompanied by correspondence, newspaper editorials, and other matters relating to the preservation of the Palisades. [See note 31.]

January 10. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 10, 1900.

I have the honor to transmit herewith further correspondence between the Department of State at Washington and the British Embassy concerning the claim of the Cayuga Indians against the State of New York, relating to which subject I had the honor to transmit other correspondence at your session of 1899.*

THEODORE ROOSEVELT."

See Governor Roosevelt's special message of January 17, 1899; also Assembly Document, 1900, No. 13. The correspondence includes letters to the Governor from John

* *Ante*, p. 3.

Hay, Secretary of State of the United States; from Reginald Tower, British Chargé d'Affaires at Washington; Mr. Hay's reply; from Lord Pauncefote to Secretary Hay, and also from the Governor's Secretary, William J. Youngs, to Secretary Hay.

January 10. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 10, 1900.

In my annual message, already submitted, attention was called to the subject of unification of the educational systems of the State. I have the honor to transmit herewith the report of the Commission to consider this subject, appointed by me in compliance with the request of the University Convocation held in July last.

THEODORE ROOSEVELT."

This commission was appointed following a discussion relative to educational unification at the University Convocation held in July, 1899. The report was transmitted to the Governor on the 2d of January, 1900. [See Assembly Document No. 17.] In its report the Commission expresses the opinion that "unification of the educational systems of the State is desirable and practicable. The departments of elementary, secondary and higher education can be united in one department, under one head administering the system through executives selected for the different divisions of the system; an apportionment of duties which will insure efficiency, with a single controlling head to prevent conflict of authority." The Commission believed that the unification of the two great educational departments — the University and the Department of Public Instruction — neither of which should be subordinated to the other, necessitated the creation of a new department, with an executive head clothed with powers which would

enable him to bring the educational system up to the very highest standard, while held to complete responsibility for any shortcomings or defects in administration; that he should have a fixed term of office sufficient to enable him to master the details of his work and order his administration perfectly. The Commission recommended a term of eight years with a salary of $10,000. The Commission further expressed the opinion that the head of the new department should be "supervised and removable for cause by a body which could have only public interest in view in the exercise of so important a power; that the same body which was to be intrusted with that power should also possess all the legislative powers of the new department, and should organize the new system, and that these functions should be intrusted to the Board of Regents of the University."

The Commission recommended that the head of the new department be called the chancellor, that the first appointment to be made by the Governor and Senate, and that subsequent selections be made by the Regents. The Commission proposed legislation creating a State Department of Education, including the University and the Department of Public Instruction; the new department was to be divided into five bureaus as follows: "First, the bureau of public instruction, including elementary and high schools and all public and secondary schools. Second, the bureau of higher education, including universities, colleges, professional and technical schools, and also all schools under university supervision not included in the bureau of public instruction. Third, the bureau of home education, including libraries and museums. Fourth, the bureau of law. Fifth, the bureau of administration and finance." The chancellor was to have general supervision of these bureaus, but each was to be under the immediate supervision of a director to be appointed by the chancellor. The compensation of the directors was to be fixed by the chancellor, subject to the approval of the Regents. It was also proposed that "the

regents should have authority from time to time in their discretion to make, alter and repeal regulations, not inconsistent with law, concerning the powers and duties of the chancellor, and for the administration and government of each bureau." Each director was given authority to appoint and at pleasure remove clerks and employees in his bureau, and fix their compensation subject to the approval of the chancellor.

A bill was introduced in the Legislature embodying the commission's plan, among other things reorganizing the University, consolidating with it the Department of Public Instruction, providing for the election of a chancellor of the new department, prescribing his powers and duties, and containing various provisions relative to administration. The bill was not passed. [See note 18.]

January 10. To the Assembly: Transmitting the annual reports of the Commissioners of Pilots, the Volunteer Life Saving Corps, and the State Board of Pharmacy.

January 12. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, ratifying nominations for a special election of member of Assembly in the 31st district in the County of New York, which became chapter 2.

January 16. To the Assembly: Transmitting the annual report of the Cooper Union.

January 25. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the Greater New York charter relative to rapid transit, which became chapter 7.

January 25. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 25, 1900.

I herewith transmit the report of the New York Commerce Commission, which was appointed by my predeces-

sor in pursuance of chapter 644 of the Laws of 1898. This report represents an immense amount of wholly disinterested labor, undertaken solely with a view of accomplishing something effectual to stop the decline in the commerce of New York. The thanks of the State are due the members of the Commission for the marked ability and untiring industry they have shown throughout their labors. [See note 1.]

In the first place, I call your especial attention to what the Commission reports as to the main cause of the damage to New York commerce; that is, to the way in which the railroads, and especially the railroads of our own State, discriminate against her in the interest of competing ports. The Commission presents a summary of its conclusions and recommendations, and the first ten subdivisions of this summary relate to this railroad discrimination imposed by what is known as the differential agreement between the trunk line railroads to the American Atlantic seaports. The Commission shows that this discrimination is made so as to overcome the advantage which New York would have under natural conditions as the cheapest route to foreign markets for the products of the West, and comments with especial severity upon the New York railroads which have received benefits from the State and yet participate in the discrimination, to the serious injury of New York. It does not appear, however, that any legislative action is at present recommended; and the Commission simply through its report seeks to give widespread publicity to the facts, holding that the evil can be remedied by improving the canals, canal terminals, etc.

The Canal Committee, of which General Greene is chairman (the report of which I am transmitting at the same time), was appointed solely to consider the canal problem. The Commerce Commission was appointed to consider the whole problem of New York's loss of commerce, inquiring into all the causes, and seeking to find out all possible reme-

dies. It speedily discovered, however, that the question of the canal was really the central question around which hinged all others concerned with benefiting the commercial development of New York or arresting the decline of this development. This is a further proof, if any be needed, of the immense importance of the canal and of the extreme unwisdom of abandoning it as an outworn institution.

The Commission makes eight recommendations as to legislative action. As to seven of these there can be no question in my opinion. Proper terminal facilities should be immediately provided as the Commission outlines. The act regulating the fees and charges for elevators should be amended. The act limiting corporations designed to navigate the canals to a capital stock of fifty thousand dollars should be repealed. The canal piers should again be reserved exclusively for canal boats. New York City should be allowed to carry out its plan for the construction of piers, and improvement in dock facilities, and also to acquire possession of the water front between Gansevoort and 23d streets. With some hesitation I agree also to the wisdom of passing an act prohibiting the conveyance in perpetuity of any land under water within the limits of the Greater New York, but providing for the lease of such land with power of renewal. This is obviously proper for the crowded districts of the City. In remote parts of the City, however, the terms must be sufficiently liberal to encourage private parties to take hold and build up improvements which will help the whole water front.

The Commission, as of the first importance, recommends action on the State canals themselves. They agree with the Committee, of which General Greene is chairman, that in the first place the canals cannot be abandoned; that in the second place, a ship canal ought not to be built by the State; and that in the third place, the present canal must be enlarged. On these three fundamental points the reports of the Commission and Committee are at one. They differ,

however, as to whether the thousand-ton-barge canal should be built at a cost of some sixty millions of dollars, or whether the canal improvements proposed in the Act of 1895 should be carried through at the cost, as they estimate it, of fifteen millions of dollars. This difference corresponds to the undoubted differences of opinion on this subject among the people in the State at large who are most interested in seeing the canals built up. In my message accompanying the Canal Committee's report I have given in detail the reasons why I accept their conclusions rather than the conclusions of the Commerce Commission on this matter.

I desire especially to call your attention to that portion of the Commerce Commission's report which shows the main source of the trouble over the nine million dollar expenditure for improvements under the Act of 1895. The Commerce Commission's report makes it perfectly clear that there never was sufficient authority, or indeed any authority, for supposing that this nine million dollars would be enough to complete the work, and that a sum was named which was entirely insufficient. It was doubtless believed to be easier to get the small sum than a large one.

I call your attention to the whole report which should be read and studied in detail. The Commission held its hearings not only in New York and in the West, but also visited all the important seaports which are the business rivals of New York. We cannot afford to blink the fact that there has been a very serious loss in New York's commerce, and that the State cannot permit this loss to go unchecked. The Commission has gone at great length into all the various causes for the state of things described. Prompt action should be taken to remedy the evils complained of. We cannot afford to rest idle while our commerce is taken away from us, and we must act in the broadest and most liberal and most energetic spirit if we wish to retain the State's

commercial supremacy. In accordance with the direction of the statute, the Commission will speedily submit drafts of bills designed to carry its recommendations into effect.

THEODORE ROOSEVELT."

January 25. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 25, 1900.

I submit herewith the report of the Canal Committee appointed by me March 8, 1899, to carefully investigate the whole question of the proper policy which the State of New York should pursue in canal matters. [See note 1.] The Committee consisted not only of the State Engineer and Surveyor, and Superintendent of Public Works, but of five of the best known and most responsible citizens of the State who have taken over ten months to make their investigation. One of their number has carefully gone over on the ground some of the most important European canal systems. The whole Committee visited the Canadian canals besides going thoroughly over our own. They have collected an immense mass of testimony and have had most careful surveys made. They went into the matter absolutely without prejudice and have felt their way step by step, coming to no conclusion until the evidence in its favor seemed overwhelming. The report they now make is unanimous, and too much stress can hardly be laid upon it.

I am well aware of the gravity of the matter that they report. They deal with the most important single State interest which is cared for directly by the State Government. They propose a policy which will entail very heavy expenditure, which could only be justified by success, and which there would be no warrant in adopting save for the weightiest and most unanswerable reasons. Yet I am convinced that their reasoning is unanswerable; that the policy

they propose is not merely wise and proper, but indispensable, if the future development of the State is to in any way correspond with its past.

The Committee point out that the first question to consider is whether the canals should be kept or abandoned. I call your attention to this point, particularly to the report of Mr. Witherbee on the European canals. It appears from this that in the most highly developed portions of Europe there has been an immense positive and relative increase in the canal systems and in the traffic upon them; so that the experience of Germany, Russia, France, Belgium, and in short of all the great industrial communities where canal work is possible, is that it is desirable and profitable to keep up the development of the canals as fast as the railways are developed. It is alleged, however, that owing to America's advanced position in the equipment and management of her railways as compared with Europe, the problem here is different, the canals being hopelessly at a disadvantage; it is being alleged specifically that the railroads competing with the canals can now carry freight so cheaply that under no circumstances would it pay to transport it along an artificial waterway through this State. This subject the Committee discusses at length. They come to the conclusion, and fortify it by arguments which are seemingly irrefutable, that if the canals are modified to meet the requirements of the business of to-day, freight can be transported upon them for about one-third of the cost by rail, and that so far as human foresight can look into the future this result can be guaranteed for at least a generation. If the facts thus set forth are true, and seemingly they cannot be successfully controverted, it is a matter of vital interest to New York State, and especially to New York City, Buffalo and the great cities between them, that the canals should be put upon a really satisfactory basis.

New York has seen of recent years a steady relative decline of her commerce compared to that of other ports.

This has largely been brought about by railroad discrimination; but there have been other factors at work. Among these the decadence of the canal commerce has been the most prominent. A new danger is now added by the upbuilding of the Canadian canal system which was completed last fall. I call your special attention to the Committee's reference to what this means in the way of the establishment of business plants at Montreal to do the work that would otherwise be done in Buffalo and New York. Another fact upon which special emphasis should be laid is the rapid development of Buffalo as the center of the iron industry and the probability that this development will go on in accentuated form during the next few years.

The canals are of course specially fitted for transportation of bulky articles. Grain and lumber fulfill these requirements and so does iron. The growth of Buffalo as an iron center would be enormously stimulated by, and in turn would of itself fully compensate for, the proposed enlargement of the canals. And, on the other hand, if the canals are made large enough, they can successfully compete in the transportation of high class freight which is now exclusively carried by the railroads at high prices.

The giant revolution in industrial conditions which the last generation has seen, has worked as momentous changes in the conditions that affect the business prosperity of communities, as in those affecting the business prosperity of individuals. The private corporation which refuses to adapt itself to the new conditions goes down, and it is not possible that a community which follows a similar course should continue to stand on its former plane. Neither New York State nor New York City can afford to rest supine while their eager business rivals strain every nerve to snatch away the commerce which has been so large a part of their life blood. New York is the only State through which, because of its topography, it is possible to transport freight by water from the great basin of the Missis-

sippi to the Atlantic. The Dominion of Canada on the north has similar advantages, and how well the Canadians have availed themselves of them, the final opening of their great canal system last fall conclusively proves. If we do not improve our own canals we shall have nothing wherewith to meet the advantages conferred upon Canadian commerce by her canals on the north, while we deprive ourselves of a great aid in the struggle with our business rivals in our own country, leaving ourselves at the mercy of the combinations made by railroads for the benefit of other localities. The considerations affecting our commercial welfare are too vital for us to neglect them.

It may, I think, therefore be assumed that we cannot abandon the canals. It remains to consider in what form we shall make use of them. Obviously there is no sufficient object to be gained by keeping them as they are. They do not do enough at present to warrant our continuing them in their present shape. If we are not to abandon them they must be so improved as to make them of real benefit. Three plans are proposed:

1. To complete the canals much on the line of what was intended in 1895.
2. To make them ship canals.
3. To adopt an intermediate course.

As regards the ship canal it suffices to say that at present the subject is not practicable as a State undertaking. The expense would be enormous, and it is by no means certain that it would be economical in the end to try to substitute for the three present types of cargo craft — that is, the lake steamer, the canal boat and the ocean steamer — one ship which should go from an interior port across the ocean with unbroken cargo. Under any conceivable change the types of vessels best fitted for navigation respectively on the lakes, the canals and the ocean, would be so great, that it is doubtful whether it would be possible to make one type that would do for replacing all three.

There is a large and influential body of public opinion which favors completing the work begun in 1895, or making what are practically not very essential changes in it. The Commission, however, gives excellent reasons why this should not be done. The work would be far more expensive than it was originally supposed would be the case. One great trouble with the present canal improvement is that it was undertaken without a thorough estimate of the total cost of completing it. No further enlargement should be undertaken without such an estimate, and this has been made by the Committee with the utmost care. After careful investigation the Committee estimates that the nearest modification of the 1895 plan which would be in any way satisfactory would cost about twenty-one million dollars. The State of New York is rich and can afford to pay heavily for a great and real improvement in her transportation facilities. But it cannot afford an inadequate improvement. The Committee give good reasons for their belief that no adequate purpose would be served by changing the canals as they would be changed through the appropriation of twenty million dollars or less.

There remains the Committee's plan for a barge canal capable of carrying boats of a thousand ton capacity to build which would involve an expenditure of sixty million dollars. At the outset this seems a very large expenditure of money, but the more I have looked into this question, the more I believe that considering the interests of the State as if they were those of a mere business corporation, this expenditure will seem right and proper. With an expenditure of twenty millions, the increase in the freight capacity of the canals and the diminution in the rate on freight might not be sufficient to enable the canals to compete with the railroads as an important factor in our transportation system; and there would then be no adequate return for the money. But sixty-two millions is not too large a sum for the great State of New York to expend,

if it will secure for at least a generation the same canal advantages which were secured to this State in the early decades of the century by the original diminutive canal. There is every reason after the most patient investigation to believe that the large canal will result in a transportation cost across the State of New York as low as that on the St. Lawrence canals and far less than any rate that is possible by railroads at any time within the immediate future, if ever,—the difference in favor of the canals over the railroads being more than three-fold; that is, the freight rate on the canals being less than a third that by the railroads. The State of New York would thus receive the full advantages which its topography offers it in low rates of transportation, advantages possessed by no other State on the Atlantic coast. It must be remembered that the Erie Canal has far more than paid its expenses, and over and above this was the incalculable advantage to the State's commerce. If the proposed barge canal is paid for as the Committee proposes; that is, by taxing the people of the canal counties which would be most immediately interested, and which possess eighty per cent. of the population and ninety per cent. of the assessed valuation of property of the State; by issuing bonds on this basis, the sum would represent less than one and a half per cent. of the assessed valuation of the canal counties; whereas the original Erie Canal represented more than three per cent. of the valuation of the State. In other words, we shall assume a burden less than one-half as great relatively to our resources as was assumed by New York when she was a comparatively poor and weak community. We would assume a burden only about as great as the burden of the Brooklyn Bridge when it was assumed by New York and Brooklyn. If three-quarters of a century ago New York State could build the original Erie Canal, if a quarter of a century ago the present city of Greater New York could start to build the Brooklyn Bridge, in

each case to the enormous advantage of the community which incurred the burden of the expenditure, there is no reason why the Empire State should now shrink from such an undertaking, when it promises similar results. The eighteen-year bonds which will be negotiated would result in an increase of but about ten cents on every hundred dollars of the present assessed valuation, and this would decrease year by year as the valuation increases. The aggregate tax of the canal counties is now about two dollars per hundred of valuation, and this would be an increase of but ten cents on each hundred dollars. As a matter of fact, this ten cents increase is much less than the fluctuations from year to year in taxation. It is the city of New York which will pay over two-thirds of the cost, or in other words, over forty millions of the amount. She is now considering the propriety of spending very nearly double that amount for railroads, bridges and tunnels to facilitate the movement of her citizens within her own limits. It is surely worth while, when this is the case, to consider the propriety of a much smaller expenditure, upon the success of which may depend the fact whether there will be enough passengers to make these enterprises successful.

I call your special attention to that portion of the Committee's report in which they set forth that the efficiency of the canals depends upon their management quite as much as upon their physical size, and that there should be no further money spent upon them unless accompanied by measures which will secure their management upon an absolutely business basis. These measures are:

First. To remove all restrictions as to the amount of capital of companies engaged in transportation, so as to encourage instead of hampering the development of those modern business methods which are largely the foundation of our present prosperity.

Second. To provide for mechanical means for traction and the use of mechanical power in the place of hand power in the locks.

Third. The organization of the force on a permanent basis so as to afford a guarantee that the entry into the service of applicants, their tenure of office and promotion will depend solely on their fitness. This I consider a recommendation of vital importance. We must make it possible for young engineers to enter into the work on the canals as they would into any other career, and the ordinary laborers and the like should be employed only when they show themselves presumably fit for the work, and should be kept so long and only so long as they render efficient service, being promoted, reduced or dismissed strictly in accordance with the capacity, industry and good conduct of which they give proof. There must be legislation to secure the permanence of any such system.

Fourth. A revision of the laws in regard to the letting of public contracts and of advertising, so as to prevent a repetition of the matters animadverted upon in the portion of my annual message on the subject of the canals, recently laid before your body.

I again earnestly ask your attention to this subject than which no other can be more vital to the welfare of the State.[33]

THEODORE ROOSEVELT."

For the text of the report referred to in the foregoing message, see Assembly Document No. 79.

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[33] Chapter 411, approved April 12, authorized and directed the State Engineer and Surveyor to cause surveys, plans and estimates to be made for improving the Erie canal, the Champlain canal, and the Oswego canal. The act appropriated $200,000.

The plan of constructing a 1,000 ton barge canal, which the committee estimated would cost $60,000,000, received favorable consideration at a subsequent session of the Legislature, and in 1903, an act was passed, chapter 147, authorizing the expenditure of $101,000,000 for the construction of such a canal, which act was submitted to the people at the November election in that year and approved.

January 25. To the Assembly: Transmitting the annual report of the Commissioners of Quarantine.

January 26. To the Assembly: Transmitting the annual report of the managers and superintendent of the New York State School for the Blind at Batavia.

January 29. To the Assembly: Transmitting the annual report of the New York State Veterinary College, and the annual report of the State College of Forestry at Cornell University.

February 5. To the Assembly: Transmitting the annual report of the Adjutant General, also the annual report of the State Superintendent of Elections of the Metropolitan Elections District.

February 7. To the Assembly: Transmitting the report of pardons, commutations and respites.

February 15. To the Assembly: Transmitting the annual report of the State Board of Health.

February 21. To the Assembly: Transmitting the report of the New York Pathological Laboratory of the University of Buffalo, and the annual report of the New York State Experiment Station.

February 26. To the Assembly: Transmitting a supplementary report of the New York Commerce Commission, comprising seven bills for the consideration of the Legislature.

March 1. To the Assembly: Transmitting the annual report of the embalming commissioners.

March 5. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 5, 1900.

The attached letter from Honorable John D. Long, Secretary of the Navy, explains itself. I very earnestly recommend that the request of the Secretary of the Navy be

granted. If there is one branch of the national public service which should be kept at the very highest point of efficiency, it is the navy, and if there is one State which more than any other is peculiarly interested in the navy, it is New York State. As part of the American nation, New York has always done its share in upholding the navy, and now that it is called upon to act in its capacity as a State, I earnestly hope that it will comply with the request of Secretary Long.[34]

THEODORE ROOSEVELT."

The following is Secretary Long's letter:

NAVY DEPARTMENT,
WASHINGTON, *March* 1, 1900.

SIR.— The Department desires to purchase for the United States, and has secured an option on, a tract of land known as Iona Island, in Rockland County, New York; said property embracing all that part of Iona Island lying east of the lands owned by the West Shore Railroad Company.

This property is situated on the west bank of the Hudson river, about one and one-quarter miles north of Dunderberg mountain.

It is the desire of the Department to utilize Iona Island as a site for a naval magazine for the storage of ammunition, but, before concluding the purchase, it is respectfully requested that such legislation be enacted by the Legislature of the State of New York as may be necessary to enable the Department to carry out this purpose, and to provide that, after the United States shall have acquired said Iona Island, and obtained a legal title thereto, it shall be ceded as a government reservation.

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34 Jurisdiction over Iona Island in Rockland county was ceded to the United States by chapter 226, passed March 24, 1900.

As the option on this property will expire March 21, 1900, at noon, it is desirable that action be taken at an early date. Form of bill herewith.

Very respectfully,

(Signed) JNO. D. LONG,

Secretary.

Hon. THEODORE ROOSEVELT, Governor of the State of New York, Albany, N. Y.

March 13. To the Assembly: Transmitting the annual report of the Civil Service Commission.

March 14. To the Legislature: Certifying to the necessity of the immediate passage of a bill to authorize the appointment of a commission to inquire into the local government of the city of New York, and the charter thereof, and suggest legislation thereon, which became chapter 465.

March 14. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the New York charter relative to the law department, which became chapter 284.

March 14. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the New York Charter in relation to the restriction of the power of the commissioner of water supply to contract for the supplying or selling of water for public or private use or consumption, which became chapter 283.

March 14. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the Greater New York charter relative to teachers' salaries, which became chapter 751.

This certificate appears in the records of the Governor's office, and it was doubtless sent to the Legislature on the day it bears date, but the legislative journals do not contain any record of it. The bill was passed by the Senate on the 12th of March, and by the Assembly, without amend-

ment, on the 15th, and the journal of each house shows that the bill had been printed and on the desks of the members in its final form three calendar legislative days. The certificate was therefore unnecessary, and it seems that by custom in the Legislature an emergency certificate is not handed down, nor read, nor entered on the journal unless it is actually used to give jurisdiction to pass the bill without complying with the provision of the Constitution, article 3, section 15, which requires a bill to be printed and on the desks of the members in its final form three calendar legislative days before its final passage.

March 23. To the Legislature: Certifying to the necessity of the immediate passage of a bill establishing a separate department of elections in New York. The bill was passed, but was not approved. It was included in the omnibus veto of thirty-day bills.

March 27. To the Assembly: Transmitting the annual report of the Sailors' Snug Harbor.

March 28. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the agricultural law as to state fairs, which became chapter 346.

March 29. To the Legislature: Certifying to the necessity of the immediate passage of a bill to secure equal educational rights to colored children, which became chapter 492.

March 30. To the Senate:

Veto of a bill entitled "An act to amend chapter 686 of the laws of 1894, entitled 'An act for the preservation of macadamized public highways in Queens County,' in relation to street and surface railroads in incorporated villages in the county of Nassau."

"The object of the original act was to prevent the construction of any street surface railroad or railroad of any kind upon the macadamized highways in any town in Queens county unless a vote of a majority of the electors

of such town had been cast in favor thereof at an annual town meeting. In amending this law as proposed, for some reason, the words 'or railroad of any kind,' have been omitted from the body of the section, thereby permitting the construction of steam railroads in any portion of the towns in Queens or Nassau counties without a vote of the people. The people of Queens and Nassau counties have bonded themselves to a very large extent to maintain a system of macadamized roads unequaled in this State. They are justly proud of this fact and have endeavored through the Legislature to place ample safeguards around them. The permission which this bill would give to allow steam railroads to go through or over these roads might work very great injury to this macadamized road system. The intent of this bill was probably to allow the laying of a trolley line or lines through certain villages in Nassau county. It must be remembered, however, that the macadamized streets through which these railroads wish to pass were built by the towns, and town and county bonds were issued for that purpose. The entire people of the towns were therefore interested in their preservation. I do not approve of any measure which would take from the people the right to vote upon such a proposition, and as this bill deprives the citizens of the towns in Queens and Nassau counties of the right to say whether or not such a road shall be built, it cannot meet with my approval."

The bill was not passed over the veto.

April 2. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 2, 1900.

"There is before you a measure for the establishment of a tenement house commission to look into the whole subject of the proper construction of tenement houses in the congested districts of our great cities of the first class. I earnestly hope that this bill may be enacted into law. It is

probable that there is not, and has not been, before your body a measure of more real importance to the welfare of those who are least able to protect themselves and whom we should especially guard from the effects of their own helplessness and from the rapacity of those who would prey upon them. There was held this year in New York a Tenement House Exhibition, showing by maps and models the dreadful conditions which we are now striving to remedy, and the shape that the remedy should take. One of the most striking features at this exhibit was the series of charts which showed the way in which disease, crime and pauperism increased almost in geometrical proportion as the conditions of tenement house life became worse — that is, as to overcrowding are added the evils of want of air, of light, of cleanliness, of comfort, in short of all the decencies of life. These decencies are of course indispensable if good citizenship is to be made possible. The tenement house in its worst shape is a festering sore in the civilization of our great cities. We cannot be excused if we fail to cut out this ulcer; and our failure will be terribly avenged, for by its presence it inevitably poisons the whole body politic and social. At present in New York the conditions are in some respects worse, not better than they were a few years ago, because now the authorities permit the erection of huge buildings, which though less disreputable in appearance than the old tenement houses are, because of their immense mass and inferior light and air shafts, worse from a hygienic standpoint.

Two classes of people are interested in perpetuating the present infamous conditions, viz.: the class that owns the tenement houses and the class that builds them. The best owners and the best builders do not desire to perpetuate these conditions; but it is imperative to protect them from the competition of their less conscientious rivals.

Against this concrete and mercenary hostility to the needed reform we can marshal only the general sentiment

for decent and cleanly living and for fair play to all our citizens. Too often the sufferer himself is dumb either because he cannot express himself or because he does not know what remedy to advocate. In his interest, and in the interest of all our people,—above all in the interest of the State whose standard of citizenship in the future is partly dependent upon the housing of children in the tenement house districts of the present—we should see to the improvement of the conditions which now make the congested districts of our great cities a blot on our civilization. Great good was accomplished by the tenement-house commission appointed under a similar bill a few years ago. This good is now in part being nullified, and a new Commission is urgently needed. [See note 6.]

THEODORE ROOSEVELT."

April 2. To the Assembly: Transmitting the report of the State Board of Health upon examination of samples of food colors in conformity to the provisions of chapter 518 of the laws of 1899. See Assembly Document 1900, No. 73.

April 3. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill, which became chapter 419.

April 4. To the Legislature: Certifying to the necessity of the immediate passage of a bill to abolish the Statutory Revision Commission, which became chapter 664.

April 4. To the Legislature: Certifying to the necessity of the immediate passage of a bill making appropriations for quarantine improvements, which became chapter 393.

April 4. To the Legislature: Certifying to the necessity of the immediate passage of a bill relating to city funds of Syracuse, and to provide for unpaid overdrafts and deficiencies. The bill was passed by the Senate on the 4th of April; it was received by the Assembly on the 5th, and referred to the committee on rules which then had charge of the calendar. The Legislature adjourned on the 6th, but this bill was not put on the calendar, and was not passed.

April 4. To the Legislature: Certifying to the necessity of the immediate passage of a bill making appropriations for certain expenses of government, and for the payment of extraordinary expenses incurred under the provisions of the Constitution and executive law in the conducting of criminal proceedings and investigations in the county of New York, which became chapter 365.

April 4. To the Legislature: Certifying to the necessity of the immediate passage of a bill repealing section 65 of article 4 of the Public Health Law. The legislative journals do not contain any record of this certificate. The bill referred to in it was passed by the Assembly on the 5th, the day before final adjournment, but was not passed by the Senate. The Assembly journal shows that the bill when passed had been printed and on the desks of the members three calendar legislative days.

April 5. To the Legislature: Certifying to the necessity of the immediate passage of a bill to establish a State tuberculosis hospital in the Adirondacks, which became chapter 416.

April 5. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the primary election law, relative to the time of holding primary elections in a presidential year, which became chapter 506.

April 5. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the State Charities Law. The bill was not passed.

April 5. To the Legislature: Certifying to the necessity of the immediate passage of a bill amending the Agricultural Law, relating to penalties for watering milk furnished to butter and cheese factories conducted on the co-operative plan, which became chapter 559.

April 5. To the Assembly: Transmitting the annual report of the Health Officer of the port of New York.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of the supplemental supply bill. See next certificate.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of the supplemental supply bill which became chapter 420. Second certificate.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of the tax rate bill, which became chapter 421.

April 6. The Legislature adjourned without day.

THIRTY-DAY BILLS.

April 14.

Veto of Assembly bill relating to settlement of lawsuits without attorneys' consent.

"I withhold my signature from this bill because in my judgment it is thoroughly vicious. It provides that no settlement of any law suit shall be valid without the consent of the attorneys or without an application to the court upon notice to the attorneys. The code now provides all necessary security for an attorney in that it gives him a lien upon the cause of action. This bill would be a benefit chiefly to the very lawyers whom the honorable members of their profession least desire to see benefited — that is, to those who bring suits for damages on account of accidents and who wish to be in a position to mulct both their own clients and the defendants in case of a settlement. In its first draft the bill applied only to negligence suits. As it was passed, it applies to all suits. An unscrupulous attorney might turn it to his advantage by bringing a blackmailing suit at the eve of any great commercial or railroad consolidation when it would be in his power to hold up a settlement involving great sums of money. In short, the possibilities for fraud which are afforded by this bill are so numerous that it is not entitled to any consideration."

April 25.

Veto of Assembly bill to appoint a commissioner of education in the city of Troy.

"I withhold my signature from the Troy School bill. There are many excellent features in the proposed bill, but it is so revolutionary in its nature that I deem it inexpedient to sign it at the present time, especially in view of the fact that the present Mayor will during his term be able to change completely the personnel of the present board. With all of this legislation it must be remembered that the legislation itself, though it may be important, is less important than the administration. Whether we get good or bad government in our cities is mainly a matter of administration. Beyond question this bill has been pushed with a desire to better the conditions of the schools of Troy, and equally beyond question the desire for some such bill has arisen because of the summary dismissal of teachers for political reasons at times in the past. It is exceedingly important to get rid entirely of political considerations in dealing with the schools. By section ten of the proposed bill, this is recognized and provided for in excellent shape, but at present it seems to me unwise to turn the school over to a single commissioner who would change whenever a new party came into power. I think this would deprive the schools of a needed element of permanence."

April 25.

Memorandum filed with Senate bill, chapter 677, relating to court attendants in the county of Queens. Approved.

"This bill was passed in both branches of the Legislature and went to the mayor of the city of New York for approval. It was returned to the Executive Department not approved. This is the first instance in which a bill vetoed by the mayor has received Executive approval except where it has been re-passed by both houses of the

Legislature over the mayor's veto, and it is proper that the reasons which influenced the Governor in signing this bill should be stated.

This act relates solely to the question of providing for attendants for the Supreme Court and the County Court in and for the county of Queens. The county of Queens, notwithstanding chapter 378 of the Laws of 1897, remains a municipal corporation for certain purposes as completely as if that act had not been passed. The maintenance and expense of conducting the courts of the county are a county charge and are in no sense a charge upon the city as a municipal corporation. The money necessary to pay the officers, the appointment of which is provided for in this bill, must be raised by a county tax imposed upon the county of Queens, and not by a city tax imposed upon the city of New York as a whole.

It is clearly manifest that the proposed law does not in any wise affect the property, affairs or government of any of the several departments of the city of New York and therefore it is not such a law as is required by the Constitution[c] to be submitted to the mayor of New York for his action thereon."[35]

May 3.

Memorandum filed with Senate bill, chap. 753, fixing stenographers' salaries, first department. Approved.

"This act is asked for by the judges of the courts concerned. One member of the Appellate Division writes me

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[c] Const. 1894, art. 12, § 2.

[35] See McGrath v. Grout (1902) 171 N. Y. 7, where it was held that the acts passed in 1901, chapters 704, 705 and 706, which respectively made the offices of sheriff, register and county clerk of Kings county salaried offices, were not special city laws within the meaning of the Constitution, and that it was not necessary to send them to the city for approval. They related primarily to the county, and only incidentally affected the government of the city of New York. The city was to collect and disburse the salaries of these officers, but for this purpose it was deemed a state agency.

as follows: 'The Legislature at its last session passed a bill known as Senate bill No. 249 which amended section 9 of chapter 553 of the Laws of 1895, entitled 'An act in relation to the Supreme Court in the First Judicial Department and the Appellate Division thereof in the First Department, in relation to the salary of the Supreme Court stenographers.' The object of this act was to equalize the salaries paid to the stenographers in the Supreme Court in the First Department with the salaries paid to the stenographers in the Supreme Court in the Second Department and in the City Court of the city of New York. I know of no reason why the stenographers of the Supreme Court in the First Department whose duties are much more important and onerous should not receive the same salary as is paid the stenographers in the Second Department, or in the City Court; and, although I had no knowledge of this bill until after it had passed, it would seem that it would only be right to give these very hard working and deserving men the same compensation that their brethren received in positions of much less importance. In some way, however, this bill was sent to the Mayor as a bill affecting the city of New York and has failed to receive his approval. I am at a loss to understand upon what principle it was considered proper to send it to him. The provision of the Constitution authorizing the Mayor to veto bills applies to 'laws relating to the property, affairs or government of cities.' (Article 12, section 2 of the Constitution.) Certainly a bill regulating the appointment of subordinate officers of the Supreme Court and regulating their compensation which is made a county charge has no relation to the property, affairs or government of a city. This act relates to the Supreme Court; regulates the appointment of its subordinate officers, provides for their compensation and prescribes their duties, thus relating directly to the administration of justice; and it is difficult for me to see that it applies in any way to

the government, property or affairs of the city of New York. Of course these are only my individual views, but as this bill would seem to remedy what is an injustice, and as I certainly think that acts in relation to the administration of justice and to the organization of the Supreme Court could not be subject to the control of the municipal authorities, I have ventured to communicate to you the exact situation in regard to this bill.'

I have already signed a bill somewhat similar in character introduced by Senator Norton relative to court attendants in Queens county, under an opinion given me by the Attorney General that it was not a city bill. Under these circumstances I have appended my signature to this bill. [See note 35.] "

May 3.

Memorandum filed with Senate bill, chap. 751, amending the Greater New York charter as to teachers' salaries. Approved.

" This bill is obscurely, or perhaps it would be better to say, clumsily drawn on one or two points. Its general purpose, however, is admirable, and the best educators, the men most interested in seeing the public schools of the Greater New York put upon a thoroughly efficient basis and absolutely removed from the domain of politics, most earnestly favor the measure. After careful and prolonged consultation with the Attorney General's department, it seems evident that the argument advanced by Mayor Van Wyck in his veto as to the enormous addition in the expense is not well taken. The statements of the auditor of the school department, Mr. Cook, and of the other official experts most familiar with the facts, are that the increase of salaries provided for will practically only equal the amount asked for by the school board under the old Ahearn law, which law was rendered nugatory by the action of the board of estimate and apportionment. This

action in turn plunged affairs into chaos and rendered legislation absolutely necessary, the present bill being drawn primarily merely to meet the pressing necessity created by this action and by the chaos into which it threw the schools. The Attorney General's department also says that the acknowledged intent of the legislature to limit the increment of increase of teachers' salaries between the minimum and maximum sums provided cannot be misunderstood and that in the judgment of that department no court would hold that such increment continued indefinitely. At the hearing before me not only the introducers of the various bills which were consolidated into this, but the representatives of the teachers explicitly stated that this was their understanding of the bill; that for instance such provisions as, in section 1091 providing for the forty dollar annual increment for female teachers is not to continue beyond the time specified in the portion of the section immediately preceding.

The general purpose of the bill is so good, the change so vitally necessary, and the provisions as a whole will tell so much for the betterment of the schools, that I deem it best to sign the bill. Unquestionably it will need amendment, and I shall call the matter specifically to the attention of the charter commission; but this commission can in my judgment deal better with the situation created by the enactment into law of this measure than with the situation as it now exists."

May 4.

Memorandum filed with Assembly bills, chaps. 764 and 765, providing for improvements in Bedford and Remsen avenues, Brooklyn. Approved.

"The case as regards these two bills is so peculiar that favorable action in reference to them seems necessary. The equitable argument for them appears as strong as in the case of the bill already approved by the local authori-

ties providing for the continuation of a street by bridge over the Harlem. In each case the circumstances are so unusual that a change must be made in the ordinary method of making assessments and the burden to a certain extent be borne by the city at large. The needs of the Borough of Brooklyn are so great that, where they are flagrantly disregarded by the local municipal authorities, in exceptional cases, an appeal must lie to the State Legislature. Such an appeal must not be made save in these exceptional cases where there has been flagrant injustice; but when this injustice is clearly shown it is the right of the Legislature to act."

May 4.

Memorandum filed with Assembly bill, chap. 769, relating to the Soldiers and Sailors' Home. Approved.

"It has been the consistent policy of the Nation and State to differentiate in the sharpest manner between old soldiers who are inmates of State Homes and other wards of the State. Veterans are cared for by the State in homes just exactly as other veterans or the same veterans are pensioned, this pension having no analogy to the poor law relief. The purpose of this bill is merely to emphasize this phase of the State's policy. It is in no sense a reflection upon the State Board of Charities. Under the opinion of the Attorney General herewith included, the bill does not in any way deprive the Board of its full right of inspection.

"Memorandum by the Attorney General respecting an act entitled 'An act relating to the State Board of Charities and their control and management of the New York State Soldiers and Sailors' Home,' being Assembly bill introductory number 1661.

"This act provides as follows: 'The New York State Soldiers and Sailors' Home is hereby exempted from the *management and control* of the State Board of Charities

and in respect to said institution said Board are hereafter only to exercise their constitutional right to *visit and inspect.'*

"Section 11, of Article VIII of the State Constitution provides as follows: 'The Legislature shall provide for a State Board of Charities which shall *visit and inspect* all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, * * *' Section 13 of said Article contains the following provision: 'Existing laws relating to institutions referred to in the foregoing section and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature.'

"The power of the State Board of Charities as to the visitation and inspection of charitable institutions, at the date of the adoption of the foregoing constitutional provisions, were defined by chapter 951 of the Laws of 1867, Chapter 571 of the Laws of 1873 and Chapter 661 of the Laws of 1878. It is sufficient to say that the powers conferred by these statutes are not materially different from those conferred upon them by the existing laws. It is a rule of construction applicable to constitutions as well as to statutes that the words employed are to be given the ordinary meaning and significance unless there is something in the context indicating a different intent. It is therefore necessary first to consider the meaning of the term 'visit and inspect,' as used in the constitutional provision above quoted. The word 'inspect' is defined as follows: 'To view closely and critically; examine (a thing or place) in order to ascertain its quality or condition; especially to examine officially in order to make a formal report.' (Century Dictionary.) The word 'visit' is defined as follows: 'To go or come to see for the purpose of inspection, super-

vision, examination, correction of abuses, or the like; examine; inspect.' (Century Dictionary.)

"It will thus be seen that the powers conferred by the Constitution upon the State Board of Charities are very broad and comprehensive. They include functions and powers many of which may be considered as coming within the term 'management and control,' used in the statute under consideration. In addition, it must be taken into consideration that when the constitutional provisions above quoted were framed, the framers had in mind the fact that there then existed a State Board of Charities with powers of visitation and inspection defined by statute. In view of this fact it must be assumed that the framers of the Constitution intended to confer upon the State Board of Charities similar powers of visitation and inspection to those which it was then exercising. The Constitution having conferred upon the State Board of Charities the power of visitation and inspection, the Legislature is powerless to take from said Board any part of the power thus conferred. It is possible and indeed probable that the Legislature has the right to prescribe rules, regulations and methods of procedure for the exercise of these powers of inspection and visitation so long as such rules and regulations do not take away or detract from these powers; but beyond this the Legislature is powerless to interfere. If this act becomes a law, its effect will be merely to take from the Board of Charities such powers of management and control as they now possess, if any, not included in the power of visitation and inspection conferred upon it by the Constitution."

May 5.

Memorandum filed with Senate bill, chap. 771, regulating the compensation of interpreters in Kings county. Approved.

"This bill was transmitted to the Mayor of New York and vetoed by him, probably by mistake. It provides for

an increase in the compensation of interpreters in the surrogate's and county court in the county of Kings. It is made a county charge and has no relation to the affairs of the government of the city. I do not consider that under this class it is a proper measure to go to the Mayor, and have therefore signed the same. [See note 35.] "

May 5.

Veto of Assembly bill to amend the act of 1896, chap. 446, authorizing electric light companies in towns or villages to acquire real estate.

"This bill is not approved, because the powers it confers are too vaguely defined. The original act which this bill seeks to amend, recognizes the caution which should be entertained in clothing electric light companies with the great powers of condemnation enjoyed by water companies, and therefore limited this right to the electric light companies of villages and towns only."

May 5.

Veto of Senate bill amending the New York Consolidation act of 1882, chapter 410, relative to summary proceedings.

"This bill is not approved because it appears that the business interests affected by it are opposed to it, deeming that the change would result in increased expense, and especially at certain seasons in a great falling off in the efficiency of the service rendered."

May 5.

Veto of Assembly bill amending section 977 of the Code of Civil Procedure, relating to the trial and issues of fact and law other than preferred cases, and a bill to amend section 791 of the Code of Civil Procedure relating to preference among civil actions.

"Serious abuses were alleged, especially in regard to the actions of one judge, and the existence of these abuses,

although not by any means to the extent alleged, was admitted; but it appears that the Appellate Division is already taking steps to correct them. It is to the highest degree undesirable that the legislature should take from the courts the power of determining their own calendar unless for the most incontrovertible reasons."

May 5.

Veto of an Assembly bill authorizing the board of estimate and apportionment of the city of New York to audit and allow, and also authorizing the comptroller of the city of New York to pay certain persons compensation for services actually rendered to the city of New York in the department of health in the years eighteen hundred and ninety-nine and nineteen hundred, prior to the classification and preparation of municipal civil service eligible lists for the position of anti-toxin accountant in said department.

"This bill relates to a remarkable case of violation of the rules, that the civil service reform association has followed for some time, and with which it has dealt in various ways. As a matter of fact, no such positions as those described existed at the time the men were put in the department as bookkeepers, and there kept in violation of the law. In an examination for permanent appointment, one failed to get on the list and one was so low down that he could not be reached. They were still continued, however, no appointments being made from the list that was formed; and a month ago the special title now given was created for them—under circumstances that are about to be questioned in the courts. If these men, or in fact any others who are the proposed beneficiaries of these claim bills, have performed actual services for which they have not been paid, the new civil service law contains a special provision giving them the right to recover the

amounts claimed from the officers who were responsible for their selection."

May 5.

Veto of an Assembly bill, amending the fish, forest and game law, relative to hooking coarse fish in Ouleout Creek in Delaware county.

"This bill does not meet with the approval of the Fish, Forest and Game Commission."

May 5.

Veto of an Assembly bill amending section 1 of the Watkins Water Supply act, L. 1898, chapter 338.

"This bill is wrongly numbered. It purports to amend section 1 of the act entitled 'An act to supply the village of Watkins with pure and wholesome water.' It is section 10 that should have been amended. Senator Willis' bill on the same subject has already been signed." [Chapter 368.]

May 5.

Veto of Assembly bill amending the Fish, Forest and Game laws relative to services at forest fires.

"A similar bill introduced by Senator Chahoon has been signed." [Chapter 609.]

May 5.

Veto of an Assembly bill amending the election law, and authorizing the town clerk to administer oaths to primary election officers.

"This bill is to authorize town clerks to administer oaths at primaries. This bill is unnecessary. There are always

present notaries public or justices of the peace and there seems no necessity to have town clerks do the work of a notary public in this particular instance."

May 5.

Veto of Senate bill amending the Penal Code relative to crimes against the elective franchise.

"This bill sought to amend the penal code in relation to crimes against electoral franchises. The object sought to be accomplished by this bill was apparently a good one but by a mistake either of the printer or in the drafting the practical effect of the bill should it become a law entirely supersedes section 41-T of the penal code, which relates to intimidation of voters. This would be a great step backwards and a wrong to the people of the State which could not for an instant be tolerated."

May 5.

Veto of Senate bill amending section 337d of the Penal Code, relative to trials for keeping slot machines.

"It is doubtful whether this bill will conserve the interest it was intended to conserve. A palpable error was made in the drafting of this bill; therefore it cannot receive Executive approval."

May 5.

Veto of Assembly bill amending the liquor tax law, relative to the sale of liquor on election days.

"This bill is to amend the liquor tax law relative to the sale of liquor on election days. It provides 'except that the prohibition of this subdivision does not apply as against the holder of a liquor tax certificate at an election in cities of the third class where only taxpayers or property owners or both are voters, nor to an election in cities of the third

class for city officers not required by law to be elected at a general city election.' The general provision of the statute prohibiting the sale of liquor upon general election days is one which has met with the approval of all people in this State; and no exception should be made save for unanswerable reasons."

May 5.

Veto of an Assembly bill amending the village law, relative to licensing hawkers and peddlers.

"This is a bill relative to the licensing of hawkers and peddlers, and while it permits the sale of fish, meats and farm fruits, it includes the words 'other than oranges, lemons and bananas.' There is no reason why a vendor should be permitted to peddle apples or cherries and not be allowed to peddle oranges, lemons or bananas."

May 5.

Veto of Assembly bill to legalize the official acts of certain justices of the peace, and authorizing them to execute and file official bonds, etc.

"There is a general law upon this subject, and there is no need of a special act."

May 5.

Veto of Assembly bill to provide for the erection of a monument to the memory of Major Peter Keenan in the cemetery at Scio, Allegany county, and making an appropriation therefor.

"It would be eminently proper to put up a monument to gallant Major Keenan by private subscription; but the State should exercise great caution in thus singling out one officer above all others. Representations have already been made to me on behalf of scores of New York officers (and Major Keenan was a Pennsylvania officer) whose friends

desire that they should receive monuments as proposed to be erected to Major Keenan. If the State is to erect monuments to individual officers or soldiers, it should be done on the recommendation of some proper tribunal, which would consider the comparative merits and services of the different individuals. Otherwise, men of gallantry, but of less distinguished service, would be preferred to such men as Sheridan and Cushing. The only way to avoid this type of injustice would be to have some authoritative tribunal make a report on the matter."

May 5.

Veto of Assembly bill fixing the expenses of trials or proceedings in the courts of the State for felonies and misdemeanors committed on Indian reservations.

"It is the general policy of the State for localities to pay expenses of criminal prosecutions. This bill is protested against by the district attorney of Cattaraugus county in which there is the largest Indian reservation."

May 5.

Veto of Assembly bill amending the second class cities charter, L. 1898, chapter 182, section 261.

"A bill completely covering this subject has been signed." [Chapter 415.]

May 5.

Veto of Assembly bill amending the second class cities charter, L. 1898, chapter 182, relative to the funded indebtedness of such cities.

"A bill completely covering this subject has already been signed." [Chapter 415.]

May 5.

Veto, Court of Claims, George L. Gordon.

Veto, Court of Claims, Charles E. Linkie and Carrie V. Linkie, rehearing.

Veto, Court of Claims, Morgan Van Gorder.

Veto, Court of Claims, Martin F. Monahan, Lewis F. Fisher, John Fisher, Thomas Dalton, James H. Crutchley, William P. Hoyland, John S. Chapman, Frederick Hahn, Charles Scannell, Francis J. Ten Eyck, Charles E. Morris, Jr., William Walls, George A. Whish, Jr., Charles W. Fowler, and George B. Conley.

Veto, Court of Claims, Michael O'Keefe.

Veto, Court of Claims, Frank Fleeck. The claim was then pending in the Court of Claims.

These bills were vetoed because objected to by the Attorney General.

May 5.

Veto of Senate bill amending the Revised Statutes, relative to State Prisons as amended by L. 1889, chapter 382, and L. 1896, chapter 429.

"I withhold my signature from this bill because it is in reality a bill against the interest of the State and simply in the interest of a single firm of school furniture manufacturers, which is itself alleged to be in the furniture trust.

The present system of the control of convict labor in this State has been recommended within ten days by the National Industrial Commission at Washington in its report to Congress as the system which should be followed in its general outlines in the other States in this country. This New York system which is thus recommended for adoption by the other States is in its essence one forbidding the sale of prison made goods in the open market in competition with free labor, doing away with the contract system and competition in market prices, and limiting the use of the

products of prison labor to the institutions of the State itself. An extraordinary feature of the results achieved in consequence of this system has been the steady falling off in the number of convicts in our prisons since the abolition of contract labor. Thus since 1895 there has been a falling off of nearly 2,800 in the total number of prisoners in the penitentiaries and State prisons of New York. Moreover in the three State prisons during the same period there has been a decrease in the number of insanity cases.

The same Constitution which abolished the contract labor system also provided that the Legislature should by law provide for the employment of prisoners in work for the State and its public institutions and for the political division of the State and any public institutions of such political division.[d] In other words the State aimed both to do away with the convict contract system and with all competition by convict labor in the open market with free labor and at the same time to provide proper productive work for the convicts. It is unnecessary to point out how vital it is both for the sake of their minds and their bodies that the convicts should be employed at some kind of productive labor. This bill proposes, in the interest of one firm of manufacturers—itself, as I have pointed out, a member of the great furniture trust—to upset the system provided but five years ago through the adoption of the State Constitution. Of course if it is right to prohibit a desk being manufactured in the interest of one firm, then it is right, in the interest of other firms, to prohibit the manufacture of cotton cloth, shoes, brooms, socks, etc., etc. It is impossible to defend this bill except on the ground that it is intended to be followed by similar bills abolishing all other productive industries on which the prisoners are now employed for the State; for it is unnecessary to point out that to abolish any one industry in the prisons simply tends

[d] Const. 1894, art. 3, § 29.

to throw more men into the other industries, and therefore to make greater competition with these other industries. It is evident therefore that the present bill is indefensible. The Prison Commission may limit the number of men employed on any one industry, and if there is any complaint as to any industry, it is merely necessary to bring it to my attention and I will see that it is at once thoroughly examined and any wrong remedied. If the furniture furnished the schools is unsatisfactory either in quality or price, the proper authorities need only to call my attention to the matter. But to leave the prisoners all in idleness would inevitably in the end produce such a reaction as to bring us back to the old system which has been abolished by the present Constitution.

It may well be that too much machinery is used in the prisons for the purpose of increasing production. If so, legislative action to remedy the evil would be eminently proper. The people of the State do not expect to make profits by running prison factories, and it is well worth while for our legislature seriously to consider the Pennsylvania law of 1897 which provides that in certain public institutions of the State only foot or hand power machinery shall be used.

I will gladly co-operate in any legitimate movement to lessen such competition with free labor and to supplement the admirable work already done, which has completely put a stop to that kind of competition which resulted in cutting prices in the open market. But we cannot afford to prohibit the employment of the convicts at productive labor of some kind, and therefore it is to the last degree unwise and improper to pass a law to favor some particular employment, thus in effect discriminating against all other classes of labor, and entering upon a course of State action which if consistently followed would either result in the prisoners being kept in absolute idleness or else would work a revolution of feeling that would tend to reinstate

the very system which we have with such infinite pains abolished."

May 5.

Veto of an Assembly bill relative to claims of William H. Aikman, James Cooney, Charles H. Gangham, William A. Wilson, Edward Hayes, John G. Diegan, John F. Heaney, Frank McGrath, George Hodgson, and John F. Ulrich, attendants in the New York Municipal Court.

"The bill proposes to pay for the services of seven attendants, one stenographer, and one interpreter employed in the municipal courts from August 11, 1899, to January 1, 1900, 'pending the preparation by the municipal civil service commission of eligible lists for the positions in question.' The quoted words are misleading. For the more numerous of these classes — attendants — a list containing 217 names was published on July 17; for the position of court stenographer a list containing 26 names had been published on May 16; and a list for interpreter was published very shortly afterward, on September 27. Regular appointments might have been made from each of these lists. Such appointments were not made, however, the persons named in this bill being continued in violation of the law, and in spite of repeated protests. The civil service commission declined to permit the payment of their salaries. This effort virtually to set aside the law in their favor, is the result."

May 5.

Veto of Assembly bill amending the forest, fish and game law, as to fishing in certain waters in Seneca county.

"This bill does not meet with the approval of the Fish, Forest and Game Commission."

May 5.

Veto of Assembly bill amending the Public Health Law, relative to the practice of veterinary medicine.

"This bill is disapproved by the educational authorities of the State and is a distinction against our State veterinary institutions."

May 5.

Veto of Assembly bill amending the Code of Criminal Procedure, in relation to the prosecution of an undertaking given by an Indian.

"This bill as drawn is entirely improper inasmuch as a whole line has been left out of the printed bill."

May 5.

Veto of Senate bill relating to the claim of Joseph H. Garvey against the city of New York, for services as Superintendent of Bellevue Hospital Dispensary.

"This bill provides for the payment of the claim for salary of Joseph H. Garvey who was appointed during the year 1899 in the Department of Charities to the so-called position of Superintendent of Bellevue Hospital Dispensary. Garvey was appointed to the position in question without certification by the civil service commission, while various appropriate lists existed from which an appointment might have been made. Payment for his services was refused by both the Commission and the Comptroller on that ground, after the various temporary appointments existing at the time the new rules were framed were vacated."

May 5.

Veto of an Assembly bill, Court of Claims, estate of Margaret C. Considine, deceased.

"This is an act to allow the court of claims to pass upon the claim of Margaret Considine for damages alleged to have been sustained by reason of the cancellation of her license for a saloon. The cancellation of these certificates is made by the court and large numbers of these cancellations are continually being made. To allow an appeal to each one of the persons who feel aggrieved by such cancellation would be practically opening the door to hundreds of claimants whose cases have already been passed upon by the court."

May 5.

Veto of a Senate bill to prevent disturbance of religious camp meetings.

"This bill is to prevent the disturbance of religious camp meetings. Its purpose is excellent; but it is so broadly drawn that it would interfere with legitimate business if it became a law; as drawn it is apparently unconstitutional [art. 1, s. 6]; and in any event it would take effect only after the camp meeting season is practically over, so that the matter can best be left to be taken up next year with greater care."

NOTE.—The bill prohibited the sale of goods, or the exposure of them for sale, within half a mile of a camp meeting ground at any time when religious services were being held thereon "except only that goods, wares, or merchandise may be exposed for sale at any permanent shop or store which has been regularly kept or conducted as a place of sale for such goods, wares or merchandise for a period of not less than sixty days immediately previous to the commencement of the holding of stated religious services on such camp meeting grounds."

May 5.

Veto of a Senate bill amending the real property law, L. 1896, chapter 547, relative to authentication by county clerks.

"A bill of similar character has already become a law during the present year."

May 5.

Veto of a Senate bill amending the tax law relative to the taxation of public franchises as real property.

"This bill is not now favored by the introducer, and the State Board of Assessors has not yet decided that it would be a wise measure."

May 5.

Veto of an Assembly bill amending the tax law in relation to fees of tax collectors.

"This bill intends to amend the tax law in relation to fees of collectors and provides that the collector shall be entitled to receive from the county treasurer two per centum as fees for all taxes assessed as non-resident, returned to the county treasurer as unpaid. By far the largest amount of unpaid taxes are from those who are residents of the county. Should this bill become a law the collector would receive no percentage whatever for the return of unpaid taxes from the residents of the county. This provision is manifestly unjust and should not receive Executive approval."

May 5.

Veto of an Assembly bill amending the Penal Code relating to loan, use or sale of personal credit security taking usury.

"This bill was intended to be a step in the right direction, but was made too broad. If this bill had provided against usurious loan or money advances for labor 'to be

performed' there could have been no objection to the bill, but as the bill is drawn, it is for 'labor which has already been performed, or to be performed.'"

May 5.

Veto of a Senate bill to provide for the supply of teachers in the city of New York.

"This bill was disapproved by the department of education."

May 5.

Veto of a Senate bill regulating and restraining the practice of midwifery in the city of New York by others than legally authorized physicians.

"This bill was disapproved by the Medical Societies."

May 5.

Veto of an Assembly bill relative to the claims of certain persons for services rendered to the city of New York in the Department of Finance, and in the city magistrate's court in the year 1899.

"This bill proposes to permit payments to C. J. Dillon, a clerk in the Finance Department, and to J. H. Eatjen and Herbert S. Harvey as assistant clerks in the city magistrate's courts, the civil service commission having refused to audit the salaries of both these persons. In this case the claim is not even made that eligible lists did not exist."

May 5.

Veto of an Assembly bill, Court of Claims, claims for damages under the $9,000,000 act of 1895, chapter 79.

"The court of claims already has jurisdiction to act upon this case under the canal act, and a special act is not needed."

May 5.

Veto of an Assembly bill authorizing the Adjutant General to award a long service medal for service in the National Guard to George T. Hollingworth of the city of Utica.

"If this bill becomes a law the number of those seeking such medals for service would be enormous. It would be an exceedingly bad precedent; and no reason whatever has been shown why this particular individual is singled out above all others."

May 5.

Veto of an Assembly bill to amend the county detective law of 1897, chapter 62.

"A bill similar to this has already been signed. [Chap. 532]"

May 5.

Veto of an Assembly bill amending the Jamestown Union Free School District act of 1887, chapter 279.

"This bill provides that the board of education may designate certain holidays when schools may be closed. While it might be well to have a general law to such effect, special legislation in a single case would be of very doubtful policy.

May 5.

Veto of an Assembly bill amending the forest, fish and game law, relative to fishing in Canandaigua and Honeoye lakes.

"This bill is not approved by the Fish, Forest and Game Commission."

May 5.

Veto of an Assembly bill amending section 791 of the Code of Civil Procedure, relative to preference among civil actions.

"This bill amends section 791 of the code of civil procedure relating to preference among civil actions. It seeks

to make a person who is a nonresident of the State a sole defendant, or where the defendant is so aged or infirm that there is a reasonable probability that the action cannot be reached for trial and tried without a preference on the calendar. There are already many preferred cases and if this bill were to become a law, it would only open the way for hundreds of similar cases."

May 5.

Veto of a Senate bill amending the Waterloo village charter.

"This bill is fatally defective as drawn."

May 5.

Veto of a Senate bill amending the forest, fish and game law, relative to fishing in Chautauqua lake.

"A bill similar to this in every respect introduced by Mr. Fowler has been signed and become a law. [Chap. 597]"

May 5.

Veto of a Senate bill for the relief of certain dental students.

"This bill is disapproved by the State Dental Society."

May 5.

Veto of a Senate bill amending the forest, fish and game law, relative to fishing in Skaneateles lake.

"The bill is disapproved by the Fish, Forest and Game Commission."

May 5.

Veto of an Assembly bill authorizing and directing the clerk of the Court of Appeals to file the regents' certificate of B. Benjamin Schiff nunc pro tunc as of the 26th day of February, 1898.

"The Court of Appeals now has the power to do, upon application, what this bill provides."

May 5.

Veto of an Assembly bill providing for the appointment of a purchasing committee of the board of supervisors of the county of St. Lawrence, and to prescribe its duties.

"Jefferson and St. Lawrence have a bill like this which has been already signed. [Chap. 315]"

May 5.

Veto of an Assembly bill amending the charter of the Tidal Water Way Company, L. 1894, chapter 719.

"This is a bill which passed without the knowledge or consent of the Tidal Water-Way Company and sought to incorporate certain persons who were unknown to the original incorporators of the company with the avowed purpose of securing a majority of the stockholders. This is most vicious legislation."

May 5. The omnibus veto included the following bills:

The following bills did not receive Executive approval because they were vetoed by the Mayor of the City of New York:

S. 122. Release of Missionary Society of the Most Holy Redeemer from certain assessments.

S. 180. Relative to railroads on Atlantic avenue.

S. 197. Relief of Adolph S. Wasserman.

S. 282. Relative to headquarters for Williamsburgh Volunteer Fireman Association.

S. 368. Consolidation act, relative to summary proceedings.

S. 394. Amend charter relative to certain wharf property.

S. 454. Amend charter relative to buildings.

S. 476. Relief of Woodside Water Company.

S. 765. Relief of Patrick O'Connor.

S. 828. Release of Methodist Episcopal Church Home from assessments.

S. 849. Amend charter relative to marshals.

S. 894. Amend charter, justices of municipal court.

S. 964. Site and buildings New York City College.

S. 968. Relief of James A. Dourigan.

S. 1054. Bridge over East River at Blackwell's Island.

S. 1092. Relief of John Guiman.

S. 1133. Appointment of Solomon Cohen as policeman.

S. 1185. Amend charter relative to police department.

S. 1201. Amend charter relative to relief fund, fire department.

S. 1205. Acquisition of water rights, Ward's Island.

S. 1212. Relief of Patrick M. McCarthy.

S. 1261. Relief of Robert Clifford and John J. Sachs, and Henry Foster.

S. 1323. Amending consolidation act, Court of General Sessions.

S. 1328. Issue of corporate stock for improvement of water front.

S. 1330. Abolition of grade crossings.

S. 1343. Bridge across Jerome Park reservoir.

S. 1442. Amending charter relative to qualifications of patrolmen.

S. 1482. Relief of Charles Flood.

A. 204. Relief of Eugene Thompson.

A. 250. Exemption of Missionary Society of Most Holy Redeemer.

A. 251. Exemption of St. Joseph's Asylum.

A. 295. Railroads on Ashland place, Brooklyn.

A. 671. Repeal chapter 909, Laws of 1896, nuisances about Newtown creek.

A. 769. Interest on certain assessments, Brooklyn.

A. 1002. Payment of clerks in finance department and magistrate's courts.

A. 1043. Relief of Edward P. McCann.

A. 1079. Park in 12th ward.

A. 1198. Consolidation act relative to court attendants.

A. 1220. Relief of Charles Smith.

A. 1242. Relief of Richard Dillon.

A. 1443. Amend charter relative to designation of newspapers for publication of corporate notices.

A. 1480. Relief of Edward Lynch.

A. 1553. Removal of Kings County Penitentiary.

A. 1579. Relief of Thomas P. Wilson.

A. 1531. Relief of Frederick Hegaman.

A. 1666. Amending charter relative to removal of garbage and night soil.

A. 1685. Relief of Michael McGrath.

A. 1691. Relief of Robert J. Kennedy.

A. 1693. Relating to taxation in Queens and Nassau.

A. 1694. Grading Atlantic avenue; New Lots.

A. 1773. Amend charter relative to taxes, foreign insurance corporations.

A. 1799. Relief of James Fitzgibbons.

A. 1804. Relief of James Griffin.

A. 1824. Relief of Matthew T. Murphy.

A. 1800. Relief of John Fitzgibbon.

A. 1911. Relief of Rudolph Newschaffer.

A. 1935. Taxation in Queens borough.

A. 2008. Fulton Market Fishmongers' Association.

A. 2032. Relief of Michael J. Clifford.

A. 2051. Amend charter relative to education department.

A. 2058. Relief of William Newsam.

A. 2066. Commission to revise laws relative to municipal court.

A. 2069. Comptroller to pay certain persons in municipal court.

A. 2081. Relief of Charles Jacobs.

A. 2088. Asphalting streets near schools, hospitals, etc.

A. 2142. Assessments on Prospect avenue, former town of Flatbush.

A. 2187. Construction of conveyances, contracts and instruments, relative to assessments.

A. 2202. Relief of Thomas Cassidy.

A. 2204. Relief of James J. Enright.

A. 2208. Relief of John J. Meagher.

A. 2211. Relief of Patrick Bohan.

A. 2272. Legalizing appointments by fire commissioners of Brooklyn and Long Island City.

A. 2307. Relief of William C. Scholes.

A. 2312. Relief of Frank Bolles.

A. 2313. Relief of Patrick J. Mitchel.

A. 2315. Relief of Samuel Munson.

A. 2316. Amend charter relative to ambulances.

A. 2371. Relief of George T. Cratz.

A. 2376. Relief of Christopher C. Quinn.

A. 2377. Hospital for treatment of tuberculosis.

A. 2379. Relief of George S. J. Wheeler, William J. Dunn and Charles A. Flannagen.

A. 2429. Relief of William Strauss.

A. 2436. Amend charter relative to salary of justices of Municipal Court.

A. 777. Adjusting assessments of the Jamaica and Brooklyn plank road.

A. 954. Cultivation of trees in streets.

A. 1015. Relief of David J. Curley.

A. 1104. Relief of Stephen Darcy.

A. 1324. Abolishing office commissioner of jurors and special commissioner of jurors in Kings county.

A. 1339. Cooper Union, release from assessment.

A. 1387. Amends charter relative to selecting city magistrates.

A. 1524. Separate department of elections.

A. 1692. Relief of Charles Striebel.

A. 1688. Relief of Edward J. Barrett.

A. 1770. Amend charter relative to undertaking on appeal in abandonment proceedings.

A. 1795. Relative to parks.

A. 2195. Pay of commissioners in condemnation proceedings.

S. 147. St. Joseph's Asylum exemption from assessment.

S. 311. New York University, exemption from assessments and water rates.

S. 443. House of Good Shepherd, cancellation of assessments heretofore made.

S. 521. Relief of George Curtis DuBois.

S. 625. Amend charter relative to powers of park commissioners.

S. 978. Making county clerk's office of Kings county a salaried office.

S. 979. Making office of registrar of Kings county a salaried office.

S. 993. Making the office of sheriff of Kings county a salaried office.

S. 1037. Providing for the erection of a city prison, third district, city magistrate's court, and county jail.

The following bills were not approved by the Mayors of the cities to which they were respectively referred:

A. 2437. Relief of John J. McGraw, Albany.

A. 1042. Annexing territory within the limits of the city of Watervliet to the town of Green Island.

A. 1155. Restoring territory within the limits of the city of Watervliet to the village of Green Island.

The following bills are not approved for the reasons that they are not considered necessary; or opposed to public policy:

A. 1596. Relative to costs in actions.

A. 2442. Exemption of Young Men's Hebrew Association from taxation.

The following bill did not receive Executive approval because there was no return to the Executive Department of any action taken by the mayor of the city to which it was referred:

A. 1043. For the relief of Edward P. McCann.

BENJAMIN B. ODELL, Jr., Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 2, 1901.

TO THE LEGISLATURE OF THE STATE OF NEW YORK.— The Constitution provides that the Governor shall communicate by message to the Legislature at every session "the condition of the State and recommend such matters to it as he shall judge expedient." Acting under this mandate, I have the honor to transmit to you the following Message:

FINANCIAL.

On September 30, 1900, the close of the fiscal year, the total debt of the State amounted to $10,130,660, classified as follows:

Canals	$8,500,660
Adirondack Park, chapter 561, Laws of 1895	330,000
Adirondack Park, chapter 220, Laws of 1897	400,000
National Guard, public defenses, chapter 672, Laws of 1898 and chapter 493, Laws of 1899	900,000
Total	$10,130,660

B. B. Dunn

Of this debt, $55,000 will fall due on the 30th day of January, 1901, and $55,000 on the 30th day of January, 1902. The first has been cared for by an appropriation made by the Legislature of 1900, and no other provision, excepting for the item falling due in January, 1902, for the redemption of outstanding certificates of indebtedness, will be necessary during the current year.

The receipts and balances for the year ending September 30, 1900, were $36,511,698.25.

Of this amount $4,504,814.74 was the balance carried down from October, 1899.

The total payments for all purposes during the year amounted to $29,221,895.70, leaving a balance in the State Treasury on September 30, 1900, of $7,289,802.55.

The tax rate for the current year is 1.96 mills, which will yield on the valuation of the State ($5,461,302,752), $10,704,153.39.

The amount received from corporations during the fiscal year was:

For taxes on corporations	$2,624,508 05
For organization taxes	356,778 61
Total	$2,981,286 66

being an increase over the preceding year of $239,968.61.

The amount received from taxes on inheritances for the year ending September 30, 1900, was $4,334,803.27, an increase over the preceding fiscal year of $2,140,191.03.

The amount received from license fees for the sale of liquors, chapter 112 of the Laws of 1896, and the amendments thereto, for the year ending September 30th, was $4,235,870.25; an increase over the preceding year of $4,591.70.

A study of the principal expenditures is wise in view of the necessities which arise for a more economical admin-

istration. They are therefore submitted to you in full, and are as follows:

For educational purposes	$5,195,800 06
For charitable institutions, including care of the insane	6,748,134 03
For the Adirondack Park, purchase of lands and expenses	431,902 69
For printing and advertising	583,191 47
For the Legislature	706,709 35
For State prisons	602,800 93
For the judiciary	928,987 37
For the National Guard, including armories and arsenals, for public defenses	1,005,144 89
For the Excise Department, including refunds	564,681 65
For public buildings	261,644 41
For canals	2,875,625 93

One of the largest sources of revenue to the State is that arising from the Collateral Inheritance Tax. With the object of inquiring into the expenses of collection of this tax in view, I have secured from the Comptroller a statement which shows that during the years from 1897 to 1900, inclusive, there have been received from this source $11,765,211.08, and there have been expended, including $159,351.96 in refunds, $1,408,643.50 for collection. In other words more than 10 per cent. of the tax has been used for administration purposes. The law provides that the county treasurers shall be paid a fee for collection. The only work performed for this has been the signing of duplicate receipts and the transmission of the money to the Comptroller, at an expense during the period referred to of $276,207.16. The appraisement of the property has cost, in addition, $390,906.80, or about 3 per cent. of the total amount collected.

The legal expenses other than those named above have also been very large, and could be greatly reduced if the compensation of the attorneys was fixed by statute on a percentage basis, rather than left to the discretion of the Comptroller. No business man would suffer such an enormous drain upon his resources for the small amount of work now performed. One-half of the sum expended should have been ample for the collection of these moneys, and that of itself would have effected an average saving during the past four years of at least $150,000 per year.

I recommend that in all counties where there are now official appraisers the collection of the taxes be transferred to the State Comptroller, and in all other counties the county treasurer be made the official appraiser for such counties with no additional fee for such service.[1]

Since the adoption of the State Constitution a necessity for an increase in the force of employees in the Legislature has arisen, and without proper amendment to the legislative law this increase has been met through what is known as a supplemental list. With no definite limitation as to the number of such employees extravagance and abuses are apt to result. I recommend an amendment to the legislative law that will fix the number and compensation of such additional employees.[2]

The Comptroller's report shows also vast increase in the expenditures for clerical and other help in the departments. No doubt a thorough pruning could be effected if the Legislature would investigate and report promptly its find-

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1 Chap. 493, passed April 23, extended to several additional counties the comptroller's authority to appoint appraisers, and provided that "in each county in which the office of appraiser is not salaried, the county treasurer shall act as appraiser." For further provisions relating to this subject, see L. 1905, chap. 368, and L. 1906, chap. 567.

2 Chap. 467, passed April 22, revised the provisions of the Legislative law, sections 6 and 7, relative to Senate and Assembly officers and employees, making a substantial increase in the number and fixing the compensation of employees in both Houses.

ings, and I ask for such action. All items of expenditure in the appropriation bills should be made more in detail, so as to give fuller effect to the veto power of the Executive against unnecessary expenditures, without a disapproval of many of the gross appropriations.

In connection with the report of the Comptroller it may be well to consider the effect of our incorporation laws, and what bearing they have upon the revenues of the State, and what, if any, legislation is required to liberalize and make them more effective. That corporations are treated more liberally in other States than in our own, is well known. The additional burdens placed upon domestic corporations force capital to go to other States where more favorable laws exist, and New York is losing the revenues which other States are enjoying at its expense. The total amount of money received from the incorporation tax during the past year was but $356,778.61, showing that only $34,000,000 of capital was organized under our laws in that period. Many instances could be cited where single corporations with a greater capitalization than the aggregate just referred to, have been made in other States. What renders this condition of affairs the more unjust is that foreign corporations transact their business and use our State to all practical purposes as their main distributing point and place of business. It is comparatively easy for them to escape taxation upon a great amount of capital under that section of the law which provides that they shall pay only upon the amount of capital actually employed within the State. With inadequate means for determining that amount, upon which an honest difference of opinion may also exist, they pay but little if any taxes. What then shall we do to make our laws more popular and at the same time protect the interests of the State and increase its revenue? While the cost of incorporation is greater in New York than in any other State, entailing a larger burden upon the corporations at their in-

ception, this is of but minor import, and has but little bearing upon the discrimination against New York.

Without considering the restrictions as to the line of business or the acquirement of property, and the mortgaging of such properties, the one feature of our laws which to the average capitalist is the most distasteful is that section which provides that he shall be liable for all the debts of the corporation, individually, through a failure to make an annual report, which under a recent decision of the Court of Appeals is held to include, not only the floating but also the mortgage indebtedness of every corporation.[a] It is right that directors should be held accountable for their action where fraud or misuse of moneys or property is involved. When we take into consideration however that the report referred to, if necessary at all, could be enforced against the corporation by an action to compel it, under a money penalty, it would seem to be a very severe punishment that the failure to so file it should result in the transfer of its full debt to each and every director.

When we consider also that these reports need not convey a correct statement of the condition of the company, and are therefore of no benefit either to the State or to the company's stockholders, it would seem desirable, as a matter of right, that this provision should be repealed.[3]

The references made above, together with those as to the limitation to debt, which do not now under our laws extend to railroads, and other minor details, we might

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[a] See Morgan v. Hedstrom (1900), 164 N. Y. 224.

[3] Chap. 354, passed April 16, amended section 30 of the Stock Corporation law relative to the liability of directors for a failure to file the prescribed annual report, by providing that "if such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request to do so shall have been made by a creditor, or by a stockholder of the corporation, shall forfeit to the people the sum of $50 for every day he shall so neglect or refuse."

well regard with favorable consideration because they would do much to remove the objectionable features which now surround our corporation laws.

This subject is recommended to your careful consideration, with the hope that the present Legislature will not adjourn without having enacted amendments which will liberalize and make more popular our corporation laws. We should exercise the same supervision over foreign corporations who seek to do business within our State as over our own, and they should be subject to the same limitations. Many complaints now made against large combinations of capital are just, but owing to our lack of jurisdiction we are unable to control, and therefore no law can be framed which will reach foreign corporations effectively. Even though we deny their right to file certificates, the greatest penalty is the withholding of the right to use our courts, and this in effect is but a slight embarrassment, as the United States court can be used for the same purpose. Liberal laws therefore which will accord the same rights as those given to individuals, restrictive as to their powers and the safeguarding of the people's interest will accomplish much more than declamation against corporations, and will at the same time aid us by relieving the burdens of taxation upon the homes of those who can ill afford to bear them.[4]

The abuses which have grown up under the attorney system are such as to call for correction. There are perhaps instances where the services of special attorneys may be justified, but in most cases the work performed by them should be left to the legal department of the State. I direct the attention of the Legislature especially to the law governing attorneys for the Lunacy Commission and

[4] This recommendation was included in chap. 448, passed April 22, which amended section 180 of the Tax law, by reducing the amount to be paid by a corporation on its organization from one-eighth of one per cent to one-twentieth of one per cent of its capital stock, or upon each increase thereof.

by the Forest Preserve Board. A great amount of money has been expended in the past for such services, and if it is possible to save these expenditures without detriment to the State, it should be done. A portion at least is unnecessary, and I am convinced can be avoided without any serious embarrassment following. This recommendation is made with the belief that you will give to it the attention which its importance deserves.[5]

COMMISSIONS.

One of the most important matters to which the attention of the Legislature should be given is the possibility of consolidating or abolishing many of the commissions which have been heretofore created for the care, supervision and control of the various interests of the State. Many of these have outgrown their usefulness. Legislation in recent years has enlarged, and in many cases duplicated the work, until their many officials, with the accompanying salaries, expenses and other incidental outlays have grown to proportions inconsistent with a due regard to the interests of the taxpayers. In this connection your attention is called to the amount appropriated by the last

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[5] The act of 1900, chap. 380, which authorized the lunacy commission to appoint an attorney for each state hospital, was modified in 1905, chap. 490, by requiring the appointment of an attorney for each State hospital outside the counties of New York and Suffolk and one attorney for the Manhattan and Central Islip Hospital, and one attorney for the Long Island and the Kings Park hospitals.

In 1906, chap. 199, the Forest, Fish and Game law was amended by authorizing the forest, fish and game commission to employ counsel in its office, and also to designate and appoint attorneys to represent the department in the prosecution or defence of any action or proceeding brought under the provisions of the forest, fish and game law.

The authority here conferred on the Forest, Fish and Game Commission to employ counsel did not limit or restrict any powers vested in the Attorney-General by the Constitution, art. 5, § 6. He has only such powers as are given to him by statute, and such powers may be increased, diminished or modified at any time by the Legislature. People v. Santa Clara Lumber Co. (1907), 55 Misc. 507; 126 App. Div. 616.

Legislature for the salaries and office expenses of some of these various commissions.

The Board of Mediation and Arbitration received an appropriation of $17,800 for salaries and office expenses. The Bureau of Labor Statistics received an appropriation of $32,942. The State Factory Inspector's department received an appropriation of $121,551, making a total appropriation for these three departments of $172,293.

There are nearly as many men employed in the Factory Inspector's office as in the enforcement of the excise laws. It would seem that the State might be readily divided into inspection districts, with much better results than are obtainable under the present system, and an addition to the duties now performed, the inspectors could at the same time collect the labor statistics, and the necessity for a separate set of men, now going over the same ground and duplicating the work, might thus be avoided. Factory inspectors in the course of their inspection become familiar with the questions arising between employer and employee, and their reports could furnish a great deal of the information that is needed for the proper consideration of the relations existing between them. If this be so, it would seem that by a consolidation of these three departments into one, to be known as the Department of Labor, the work done by each of the present departments could be more efficiently performed and at a very much less expense than is now possible. If this Department of Labor should be created, with a deputy in charge of each of the three branches heretofore conducted separately, a provision could be made by which a Board of Mediation and Arbitration might be selected from those connected with the department, and a large saving of salaries and office expenses be effected.

In my opinion at least $72,000 would be saved as the result of such a union, and the great interests of labor be

better conserved. I recommend such legislation as will accomplish this result.[6]

The Factory Inspector has been charged under a recent law with the examination of the sweat-shop system in the larger cities of the State, and has examined 27,000 applications for licenses, of which 19,000 were granted. This law has been generally obeyed. It would be impossible it seems to me to prohibit entirely the performance of work in homes, and possibly it would not be desirable, but supervision by local boards of health and deputy factory inspectors will result in a very much better hygienic condition than has prevailed heretofore. The penalty for violation of the law should be made more stringent, and in this direction it is to be hoped that the necessary amendments may be enacted.[7]

EMPLOYERS' LIABILITY.

There have been frequent attempts during the past few years to enact what has been called an employers' liability law, the object being to place employees upon the same footing as individuals not employed, where death or injury may result from the acts of fellow employees without contributory negligence. The wide divergence of opinion existing between the employers and employees is responsible for the failure to secure affirmative action, and therefore it has been impossible for these interests to meet upon a common ground. A system of compulsory insurance of employees by the employers has been suggested

[6] Chap. 9, passed February 7, created the State Department of Labor, and abolished the offices of commissioner of labor statistics and factory inspector, and the State Board of Mediation and Arbitration. The act created the office of commissioner of labor, who was to be appointed by the Governor and Senate. He was vested with the powers previously conferred on the factory inspector and commissioner of labor statistics. The department was to be divided into three bureaus, namely, factory inspection, labor statistics, and mediation and arbitration.

[7] As to duties of boards of health, see L. 1904, chap. 55, and as to manufactures in tenement-houses and inspections by the Commissioner of Labor, see L. 1906, chap. 129.

as the best way of arriving at a solution of this question. It seems to me that it is possible either by this method, or by more clearly defining the law as to when the acts of the employee stand for those of the employer, to arrive at some conclusion satisfactory to both these great interests. The employer should furnish to his employee every protection. It is as necessary that careful and prudent men should be employed as it is that the best mechanical appliances should be used in the prosecution of business, and known incompetency which causes injury should be punished as fully as the failure to provide other proper safeguards. I commend this subject to you for your careful consideration. The States of Massachusetts, Indiana, Colorado and Alabama now have liability acts, and they have been found to work without detriment or serious embarrassment, and the great State of New York owes to the laboring interests of the State the same ample protection.[8]

STATE BOARD OF CHARITIES.

Article 8 of the Constitution provides for a State Board of Charities to be appointed by the Governor. As at present constituted this board consists of twelve members, receiving a compensation of $10 for each day's attendance at meetings of the Board, with expenses. The Board also maintains an office with a secretary and other employees. The appropriation for salaries of commissioners, employees, and other expenses amounted to the sum of $51,620 last year.

The duties imposed upon this Board, while important, I believe could be more properly attended to by a single

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[8] A bill on this subject was vetoed by the Governor May 11, *post*, p. 305. An employer's liability law, chap. 600, was passed in 1902.

The Constitution was amended in 1905, by adding to article 12, section 1, a provision authorizing the enactment of laws for the protection, welfare and safety of persons engaged on State or municipal work, whether directly or under a contractor or subcontractor.

commissioner selected by the Governor by and with the consent of the Senate, together with such State officers as might be designated by him. I would recommend that the present Board be abolished and the duties heretofore imposed upon it be discharged by one made up as above suggested. The reduction which I am satisfied would result thereby, without impairing the efficiency of the work, would be about $25,000 per year.

PRISONS' COMMISSION.

Article 8 of the Constitution provides for a Commission of Prisons, and chapter 1026 of the Laws of 1895 provided that the Governor should appoint eight commissioners, who receive $10 per day and expenses while in the performance of their duties. This Commission also maintains an office and office force, and received an appropriation last year therefor amounting to $13,000. While it is true that this board has affected a great saving to the State, and a better sanitary condition in the various subdivisions, yet its work has reached such a satisfactory stage, that, in my judgment, the duties of this Commission should be conferred upon a single commissioner, to be selected by the Governor, by and with the consent of the Senate, who together with such State officers as might be designated, could continue the work of the present Board of Prison Commissioners. The expenses which would be saved by this consolidation, without lessening the efficiency of the Commission, would be at least $10,000 per year.[9]

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[9] An act, chap. 12, was passed February 7, by which the number of members of the State Prison Commission was reduced from eight to three. The original act of 1895, chap. 1026, by which the Commission was established, required the appointment of one commissioner from each of the eight judicial districts into which the State was then divided. The new act did not require a geographical distribution of the commissioners, but the Governor was authorized to designate the President of the Commission.

The State Prison Commission was again reorganized in 1907, chap. 381, which provided for seven commissioners to be appointed by the Governor and Senate.

STATE BOARD OF HEALTH.

I also desire to call your attention to the State Board of Health, which consists of three commissioners appointed by the Governor, and certain *ex-officio* members. The duties are such that one competent man giving his time thereto might easily perform them, provided that the supervision of tuberculosis and glanders in cattle were transferred to the Department of Agriculture where it properly belongs, and the necessity for a large office force at an expense, according to the appropriations of last year, of $42,200, could be largely reduced. This is also suggested, with a recommendation for affirmative action by the Legislature.[10]

FOREST PRESERVE BOARD AND FORESTRY, FISH AND GAME COMMISSION.

The preservation of the forests, especially as a protection to the water supply of the State, has been one that has received proper attention from the Legislature, and is of the greatest importance. The same care has also been extended to the protection of the fish and game interests and the shell-fish culture along our coasts. The steps taken toward this end have undoubtedly resulted in great benefit.

It seems to me however that two boards, one charged with the purchase of lands and the other with their protection, must necessarily duplicate each other's work to a considerable degree, and that a consolidation would result in a large saving. The Forest Preserve Board is composed

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[10] Chap. 29, passed February 19, established a State Department of Health, and created the office of State Commissioner of Health, to be appointed by the Governor and Senate, and who superseded the Commissioners then in office, constituting the State Board of Health. The office of secretary to the State Board of Health was also abolished.

Another act, chap. 321, passed April 11, amended section 60 of the Agricultural law, by transferring to the Department of Agriculture supervision of tuberculosis and glanders in cattle.

almost entirely of officials elected by the people, and the Fish and Game Commission appointees of the Governor. The law governing the work of the Forest Preserve Board could be amended so as to permit the selection of a member by the Governor, by and with the consent of the Senate, who with the two State officers now designated should constitute the Forest Preserve Board, and the powers and duties of the Forest, Fish and Game Commission could be transferred to the Board as thus constituted. The importance of this suggestion is realized perhaps more fully by placing before you the appropriation made for these boards last year. There was appropriated by the last Legislature for the salaries and office expenses of the Forestry, Fish and Game Commission, the sum of $82,875. This includes the expenses of printing and publication of reports, salaries of commissioners and employees and other expenses incidental to the maintenance of such a department, but not the maintenance of hatcheries and legal expenses. Aside from the sum of $250,000 appropriated for the purchase of lands and expenses of the Forest Preserve Board there were expended for other salaries and office expenses over $14,000, and paid for additional counsel about $12,000. The legal work of this department should be performed by the Attorney-General.

The saving of expenses which would undoubtedly follow consolidation, amounting probably to $35,000, is certainly enough to warrant careful consideration upon the part of the Legislature, and such legislation as will lead to this result is recommended.[11]

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[11] By chap. 94, passed March 12, the forest board was abolished, and its powers and duties were transferred to the Forest, Fish and Game Commissioner, whose appointment by the Governor and Senate was authorized by the act, to take the place and perform the duties of the Forest, Fish and Game Commission, except that the Governor was authorized to appoint two persons to be associated with the principal commissioner until the 1st of January, 1903, on which day their offices were to terminate. After that time

SUPERINTENDENT OF WEIGHTS AND MEASURES.

One of the offices which in my judgment might be abolished without loss to the interests of the State and with a saving of expense, is the Superintendent of Weights and Measures. Apparently he may not perform any duties oftener than once in ten years, while he receives an annual salary of $500. This office appears to be in the nature of a sinecure, and I recommend legislation looking to its abolishment.

EXPENSES OF JUDICIARY AND STATE PRINTING.

Other great items of expense which have been growing steadily are the expenses of the judiciary and of State printing.

Upon the adoption of our present State Constitution the Appellate Divisions superseded the General Terms, the object being to relieve the Court of Appeals from the great volume of business which before had been left to its determination.

While a more rapid adjudication of actions was the object of the change above referred to, it was not supposed that this and other amendments made in the Constitution would so enormously increase the expenses of the judiciary of the State. Many laws, such as that providing for clerks and personal attendants, have been enacted in recent years, and there seems to be no limit to which this extravagance may not lead. As an example, illustrating my meaning, your attention is called to the expenses which have grown up under the Special Jury Law passed in 1896 for the city of New York. The Ap-

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the Governor was authorized in his discretion to designate two commissioners of the land office to act with the Forest, Fish and Game Commissioner in the acquisition of forest lands. The same act required the Governor's approval of claims for services or expenses by attorneys and counsel employed by the Forest, Fish and Game Commission.

pellate Division of the First Department is responsible for the appointment of the officials charged with the administration of this law, and have placed in charge one commissioner at a salary of $6,000, a deputy at $3,000, three clerks at $1,500 per year each, three at $1,000 per year, and one at $750, a total of $17,250. In addition to these officials this division also maintains its staff of employees upon the same liberal basis. Of course New York city pays the expenses of the jury commission, but this profligacy in the one case is an indication that no greater care is exercised where the expenses are borne by the State. It seems to me therefore that in making your appropriations for the judiciary a saving could be effected without a loss of dignity or power to the various branches resulting therefrom. I may say in justification of the criticism of the Special Jury Law, that I am informed that the commissioner is seldom called upon to furnish a jury and is a hindrance rather than a benefit to our jury system, and the law should therefore be repealed.[12]

Another great increase in expenses has been in the item of printing, which in 1880 amounted to $108,435.88, and last year to $583,191.47, or five times as much.

It is your duty to curtail in every way this wasteful extravagance which exists to-day in almost every State department. It is no answer to cite the fact that others have done worse and that the State is better able to afford these expenditures because of the indirect taxation, but

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[12] An act, chap. 602, passed April 27, created the office of commissioner of jurors in each county having a population of 1,000,000, which commissioner was to be appointed by the justices of the Appellate Division in the department in which such county was included. The duties required by the law of 1896, chap. 378, providing for special commissioners of jurors in certain counties, were to be performed by the commissioners appointed under the new law.

As to jury commissioners, see Allison v. Welde (1902), 172 N. Y. 421. The provision relating to the Kings county commissioner of jurors was held unconstitutional in Re Brenner (1902), 170 N. Y. 185.

it is your duty at once to take such action as may be necessary to correct what I am convinced are grave abuses.[13]

It is the right of the taxpayers to expect at the hands of the Legislature such action as will lead to a reduction of their burdens, which are now bearing heavily, especially upon the farming section of the State. I trust your favorable consideration will be given to these recommendations.

STATE TAX COMMISSION.

The State Board of Tax Commissioners have had placed upon them the additional duty of assessing the special franchise tax under the law enacted during the administration of my predecessor.* Under the first operations of this law, 4,751 valuations were made, aggregating a total of $266,163,059, an increase of $170,101,157 over the assessment of the same properties by local assessors the year previous. The tax commissioners in the valuations under this special franchise tax have had to do with the assessment of property crossing highways, and they have recommended that where the occupation is less than 200 feet the law be so amended as to leave to the localities the assessment, State supervision of such properties causing serious and unnecessary irritation to those affected, with hardly any corresponding benefit to the State.

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[13] A new State printing law, chap. 507, was passed April 23. It revised the existing statutes relative to State printing, which was divided into three classes, namely, first, legislative printing; second, department printing, and third, the session laws. The act established a State printing board to consist of the Secretary of State, the Comptroller, and the Attorney-General, and this board was required to make contracts for State printing under prescribed regulations.

For amendments to the State printing law see L. 1905, chap. 760, providing for inspectors of printing; L. 1906, chap. 330, authorizing separate contracts for maps, engravings, and other special printing; chap. 359, relative to department printing; chap. 417, conferring additional powers on the printing board; and chap. 476, relative to legislative printing.

* See *ante*, p. 64.

TAXATION.

The subject of taxation is one that is of the most import to the people of the State at large. The attempt from time to time to shift the responsibility from one class of property to the other, with but correspondingly slight decrease in the burden borne by the real estate throughout the Commonwealth, does not fulfill the requirements of the constituency which we represent. I have looked forward with pleasurable anticipation to the day when the State of New York would no longer find it necessary to levy a direct tax for State purposes. The franchise tax meets to a limited degree this expectation. The Stranahan bill, the purpose of which was to impose a tax upon all mortgages, came nearer its consummation than any law that had ever before been presented to the Legislature.[14] The complications and antagonisms which it aroused made it unwise to act upon a matter of such great importance during the last session of the Legislature; so that to-day we have the same problem confronting us as has been before us for many years.

All corporations receive from the State certain rights. They have, first, the right to exist. In addition some acquire from municipalities, through the action of the State, rights to build, maintain and operate their properties. It seems to me therefore that capital of this character in our State should pay a tribute to the creating power for that which they have received. This justifies the present laws taxing corporations for State purposes, and all future corporation tax laws should be based upon this principle. That the present law works hardships to some and is not fully enforced in other cases is apparent. This no makeshift remedy will correct, but an entirely new system should be framed to meet existing conditions and a fair

[14] A mortgage tax law was enacted in 1905, chap. 729, which was amended in 1906, chap. 532, and in 1907, chap. 340. Mortgages included in the scheme were exempted from local taxation.

and equitable recompense from all corporations enjoying State protection and favors should be exacted. Exemptions should be given by the localities rather than by the State, because it is the former which receives the greater benefit, and all corporations should therefore pay a tax based upon their earning power. But few of the many corporations in the State are now taxed in this manner, and therefore an unfair discrimination exists. A correction of this error would add greatly to corporation tax receipts by the State.[15]

In addition to this, corporations organized under the Transportation Laws, which include all those using public utilities, should also pay an additional tax. To correct many abuses which grew up under the administration of this feature of our law, the Franchise Law was enacted. While agreeing with the principle, I am convinced that the method of its administration is crude and should be more clearly defined.

We have in addition to these as a source of revenue a great number of banks, both national and State, trust and insurance companies, some of which are assessed at a high

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[15] Chap. 558, passed April 26, 1901, amended the Tax law, section 181, which imposed a license tax on certain foreign corporations, by omitting joint stock companies from the operation of the provision, and omitting from the excepted classes corporations wholly engaged in carrying on manufactures in this State, thereby subjecting this class of corporations to the payment of the license tax. The section was again amended in 1906, chap. 474, by adding a provision relative to the method of determining the amount of capital stock subject to the payment of the license tax.

The same act of 1901 amended section 182 of the Tax law by adding a provision for adjusting the tax as between a company owning an elevated, street surface, or steam railroad in a city and another company operating the same road. Section 182 was again amended, reconstructed and revised by the foregoing act of 1906.

The same act of 1901 amended section 183 of the Tax law relative to exemptions from the tax imposed by section 182, and the same section was also amended by the foregoing act of 1906.

The act of 1901 also amended section 194 of the Tax law relative to the payment of franchise taxes and penalties.

figure and others at a valuation so low as to be absurd. It is a well known fact that trust companies do not pay their proportion of the State's taxes, and that this discrimination is of such a character as to enable them to thrive and do business where a national or State bank cannot. The total amount of the capitalization, undivided profits and surplus of banks, amounts to $385,133,329, of which about $55,000,000 is in real estate, leaving about $330,000,000 in personal property in such capital and surplus. Trust companies and banks should pay a tax upon their capital to the State, because of their use of our courts and for the other privileges which are accorded them. One per cent. upon this amount could be exacted, which would bring into the treasury between three and four million dollars, and would not materially interfere with the collection of taxes in the various localities. In addition to this the surplus of savings banks and insurance companies, which is now held as a reserve, and which amounts to $469,707,751, should pay its proper proportion of the taxes, because it is in effect the capital of such banks and companies and should be so treated. I do not believe in attacking the deposit of the poor man, whether in savings banks or in the form of life insurance. Every possible inducement should be afforded by the State to encourage saving by those who labor and desire to lay up a fund against a "rainy day." But this surplus which accumulates from time to time should bear its portion of the tax burden, and the enactment of a law which would tax it at the rate of one per cent., as above, would not be too great in consideration for the protection and safeguards which our State throws around savings banks and insurance companies. These suggestions in my judgment if favorably acted upon will greatly relieve the burden upon real estate. In return for this I should favor exemption from payments by banks, other than savings banks, of all local assessments for

State purposes, and in the case of savings banks and insurance companies from all other taxation except upon their real estate.[16]

The inequalities resulting from the taxation of mortgages are very great, the burden being borne principally by estate and trust funds, nearly all other mortgages escaping taxation.

If the suggestions before outlined should meet with favor, I should recommend exempting mortgages entirely from taxation, in the belief that their taxation should be left to the operation of the Transfer Tax Law, the present unfair discrimination being thereby corrected and a lower rate secured to borrowers. [See note 14.]

THE EXCISE DEPARTMENT.

The total receipts of the Excise Department from all sources for the last year amounted to $12,567,199.25, the State's share being $4,232,625.09. This revenue was derived from 31,530 certificates. Four thousand three hundred and ninety-two certificates were surrendered during the year. The total expense of operating this department was $280,995.06, to which should be added county treas-

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[16] Chap. 118, passed March 16, amending section 187 of the Tax law, imposed on all domestic insurance corporations, and on all insurance companies organized under the laws of any other State, and doing business in this State, except fire and marine companies, a tax of one per cent. on the gross amount of premiums received by the corporation during the preceding calendar year. The existing rate was five-tenths of one per cent. Other insurance companies organized outside the United States were subject to a tax of five-tenths of one per cent. on premiums. This section was again amended in 1905, chap. 94.

A franchise tax was imposed on trust companies by section 187a of the Tax law, added by L. 1901, chap. 132, passed March 21, and which was amended by chap. 535 of the same year. The tax was to be at the rate of one per cent. on the capital stock, surplus and undivided profits.

A franchise tax was imposed on savings banks by section 187b of the Tax law, added by L. 1901, chap. 117, passed March 16. The tax was to be at the rate of one per cent. on the par value of the surplus and undivided earnings.

urer's fees, amounting to $55,758.54, making the total expense of collection $336,753.60.

Your attention is called to the low expense of collection as compared with the expense of collection of the Collateral Inheritance Tax heretofore alluded to. The Excise Law was originally framed for the purpose of taking the saloon out of politics and reducing the number of licensed places. Since 1896, the date of the passage of the law, there has been a decrease of licensed places to the number of 5,698. It is still possible however to subject the dealers to blackmail and intimidation. I find under the present operation of the law that where a violation occurs the dealer is under the control of the blackmailer, just as he was under the law for which this one was substituted. It is possible for a citizen to begin a civil prosecution on his own relation against the violator and then carry the proceedings along to trial, or if he so desires the prosecution may be closed without either the consent or the knowledge of the Excise Department. Instances have come to my notice where such suits have been settled without any reference to the department and without any knowledge by it of the consummation of such settlement. This is not the purpose of the law. It was intended to hold at all times the liquor dealer responsible, and if he was guilty of a violation it was designed that his certificate should be cancelled. Under the circumstances related it is possible for a man to be a frequent violator, to be prosecuted, to be blackmailed and still continue in business. I would recommend therefore that the law be amended so that it will be impossible, if a prosecution is begun, to settle it without the consent and approval of the Excise Department.[17]

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[17] Chap. 640, passed May 2, amended section 6 of the Liquor Tax law, by adding a provision requiring the State Commissioner of Excise to be made a party to all actions and proceedings, whether brought under the act or otherwise, which in any manner affect the enjoyment of the privileges or the operation of the restrictions provided for in this act.

I believe that criminal prosecution is of greater effect than a civil prosecution, for the reason that in the majority of cases the licenses are not owned by the proprietors of the places, but by some other individual. The real violator against the law therefore escapes and renders valueless the license intrusted to his keeping. This should also be corrected.

During political campaigns some of the hotels known as Raines Law hotels have been subject to more or less suspicion as to the character of their guests, and the charge has been openly made that they are often used for the purpose of colonization of illegal voters in Greater New York and the other cities of the State. No possible restriction can be placed upon places of this character except by constant supervision. Under the so-called Metropolitan Election Law the proprietors of these hotels are required, thirty days before an election, to give to the Superintendent of Election a list of the names of the permanent guests of their houses. This renders it still possible to colonize and cast a fraudulent vote. I would suggest an amendment to the Excise Law by which the Excise Commissioner may at all times throughout the year call upon the hotels under his jurisdiction for such a list of permanent guests as are then domiciled, and that he may be empowered to make such additional regulations as will at all times place him in possession of such information as he may be called upon to furnish by the Superintendent of Election or others.[18]

PUBLIC WORKS.

Your attention is directed to the report of the Superintendent of Public Works for a detailed statement of the

[18] This recommendation was embodied in chap. 640, passed May 2, adding to the Liquor Tax law a section, 31a, requiring the keeper of a hotel, lodging or boarding-house, holding a liquor tax certificate, to furnish to the State Excise Commissioner on demand a list of guests, lodgers, or boarders in such house with prescribed details of information concerning them.

operations of this department. The expenditures this year were $950,925 as against $867,148.41 for the year 1899. This increase was due to the Eight Hour Law, which largely increased the pay-rolls, especially for lock and bridge tending.

The repairs of the canals and structure for the current year include the grading of 130 miles of towing path, of which eighty-eight miles were raised and gravelled; also the repairing and building of a large number of structures, namely, waste-weirs, culverts, vertical and slope walls, bridge abutments, aqueducts, dams, etc.

A large number of special appropriations are made annually and the work thereunder is in most cases required to be performed under the direction of the Superintendent of Public Works. Under these special acts by the Legislature the amount of $211,327.88 was appropriated, and the cost of the completed work was $169,317.69, exclusive of the cost of engineering. Three contracts under special appropriations were commenced and completed to date in 1900, the appropriations for which were $10,996.13, and their cost $9,976.18. Twenty-eight contracts have been awarded this year, under which work is proceeding but not completed. The appropriations for these amounted to $505,426.89. The contracts were awarded for $380,-529.17. From these figures it would seem that this department has been managed in a business-like manner, and that no undue extravagance has been permitted.

The tonnage of the canal for 1899 was 3,386,051. For 1900 to October 1st, it was 2,868,526 tons, and the estimated tonnage for 1900 is 3,349,461 tons, showing a falling off for the season of 336,590 tons. It is supposed that that is due in part to the fact that the lake traffic did not open until April 23d of this year, which was unusually late. The Superintendent believes that a large part of the canal's tonnage may be reclaimed by the repeal of so much of chapter 935, Laws of 1896, as prevents the formation of

canal transportation companies with more than $50,000 capital. I recommend that such action be taken by the Legislature.[19]

STATE PRISONS.

The number of prisoners confined in the various prisons during the last year averages 3,376. The expenditure for maintenance during the fiscal year was $460,528.02. A somewhat larger appropriation for care and maintenance will be required for the coming year, for the reason that the Eastern New York Reformatory at Napanoch will come under the charge of this department. It has been found that approximately 1,600 prisoners have been engaged in productive industries. At a first glance this would seem to indicate that over half of the prisoners were idle. Such was not the case however. The others have been employed, but not upon productive industry. If the State and its political divisions would make greater demands for manufactured product, more prisoners could be employed on such work and their labor would contribute in a larger measure to their support. The Superintendent reports the structures at Sing Sing and Auburn as unsanitary and in such a condition as to prevent the application of a comprehensive scheme of gradation and classification of the prisoners and the attainment of reformatory results that might be obtained if proper buildings were provided. It is hoped that from time to time the work of the prisoners in the production of the necessary materials for new buildings, as well as in the construction of the buildings themselves, may permit their enlargement and the betterment of the sanitary conditions of the prisons without any great expense to the State.

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[19] Chap. 483, passed April 22, amended section 10 of the Transportation Corporations law, by omitting the provision added by L. 1896, chap. 935, which limited the maximum capital stock of canal transportation companies to $50,000.

It is gratifying to note that most of the prison labor is now fully employed upon industries not interdicted by the various laws for the protection of free labor which have been enacted during the past ten years. The Bertillon system of measurement which has been perfected under the present Superintendent not only renders it much easier to detect and identify a criminal who has previously served a term of imprisonment, but it also makes possible the enlargement to a greater degree of the scope of the law which was passed last year, permitting judges to fix indeterminate sentences. While the application of this law rests entirely within the discretion of the court, its scope should be so broadened as to be made mandatory in the case of conviction for a first offense for all crimes except those against the person. This would enable the prison department carefully to watch and hold out inducements to those who had taken their first step in crime, and when in their judgment the prisoner had shown sufficient signs of reformation, liberty could be granted. This could be done without any serious menace to society at large and would relieve the congestion which now seems to render necessary the erection of more prisons in the near future.[20]

MUNICIPALITIES.

The influence of good government in municipalities is of such character as to affect the people of the State, and therefore its consideration by the highest law-making power under our Constitution is proper and necessary. We may expect to find that whenever extravagance exists as to local government, it will have a similar bearing upon the action of the representatives from such a center on the expenses of the Commonwealth. While it is true that

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[20] Chap. 425, passed April 18, amended the Penal Code by adding a new section, 687a, requiring indeterminate sentences in specified cases.

such remedies as are permitted under our system of government can be used by the voters themselves to correct and rebuke, yet it is at the same time your province to assist in restraining and correcting evils which though local, may by their bearing upon other sections become the evil of the whole State.

The Legislature of 1900 authorized the appointment of a commission to redraft the charter of the city of New York, and also authorized the appointment of a commission to investigate and report on the tenement-houses of the greater cities of the State. Both of these commissions were appointed by my predecessor and both will submit reports to this Legislature.[21] Matters of such grave im-

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[21] The report of the charter revision commission was submitted to the Legislature on the 21st of January, 1901. The work of this commission resulted in the enactment of a revised charter, which became chap. 466.

The following provisions of the charter have been judicially considered, and sustained: Sec. 231, Board of Estimate and Apportionment, audit of certain claims, Kane v. McClellan (1905), 110 App. Div. 44; sec. 290, New York detective bureau, Sugden v. Partridge (1903), 174 N. Y. 87; sections 701–712, vagrancy, commitments, People ex rel. Abrams v. Fox (1902), 77 App. Div. 245; sec. 722, fire department, People ex rel. Richmond Hook and Ladder Co. No. 4 v. Grout (1903), 79 App. Div. 61; sec. 896, taxes, increasing or diminishing assessed valuation, People ex rel. Simpson v. Wells (1905), 181 N. Y. 252; sec. 1172, Sanitary Code, People v. Davis (1903), 79 App. Div. 570.

The following provisions have been declared unconstitutional: Sec. 94, mayor's term, People v. Fitzgerald (1905), 180 N. Y. 269; sec. 1392, city magistrates, People v. Dooley (1902), 171 N. Y. 74; sec. 1560, pensioners, prohibited from holding any city office, People ex rel. Price v. Woodbury (1902), 38 Misc. 189.

The report of the tenement-house commission was submitted to the Legislature on the 25th of February, 1901. As a result of this investigation, a tenement-house law for cities of the first class, chap. 334, was passed on the 12th of April.

Section 4, buildings in process of erection, was declared unconstitutional in Signell v. Wallace (1901), 35 Misc. 656; but this section was amended at the same session, by chap. 555, passed April 25, and as amended was sustained in New York v. Herdje (1902), 68 App. Div. 370. Section 100, privy vaults, school sinks, and water-closets, as amended by L. 1902, chap. 352, was sustained in Tenement-House Department v. Moeschen (1904), 179 N. Y. 325.

portance affecting the great municipalities, should be carefully considered and such recommendations as may appear feasible in the direction of better city administration should receive favorable action. These two commissions have had under consideration two very important subjects. One has to do with the government; the other in effect with the morals, health, and physical well being of a vast number of citizens.

While the revision of the charter has for its object an improvement in New York city government, yet it has not fully met all expectation, particularly as to expenditures and the husbanding of the resources of the city. Every department of New York needs corrective legislation. Especially is this true of those departments whose administration is confined to county lines. In this direction I desire to call your attention to the fact that many of the public officers in that city are receiving a larger remuneration for their services than that which is given to the President of the United States. Your attention is called to a few instances of this character. The sheriff of the county of New York receives an annual salary of $20,000, and one-half of the fees, which are said to amount to $60,000 per year more. The claim has been made heretofore that the sheriff takes great financial responsibility, and is therefore entitled to additional compensation. This is not now true in effect, because he can at all times demand a bond of indemnity and thus save himself from all harm. It would seem to me that a salary of $20,000 would be ample for this office. The same may be said of the county clerk and the registrar of the county of New York, whose salaries are excessive. In the county of Kings the combined salaries of the sheriff, county clerk and registrar amount to $300,000 per annum. This could be reduced by abolishing the fee system and substituting therefor salaries, the balance to be paid into

the treasury for the purpose of reducing the taxes upon property.[22]

Recommendations to reduce commissions and to substitute single-headed commissions whenever possible should be given favorable consideration.

The maintenance of the supremacy of the greater New York as a commercial center is important to every part of our State. Therefore the development of the water front of New York city and the improvement of its dockage facilities should receive the attention of both the municipal and State authorities. It seems to me that legislation for a more rapid improvement of its wharfing facilities should be inaugurated, and a much greater efficiency could be secured if a single-headed commission were substituted for the present Dock Board.[23]

POLICE DEPARTMENT, NEW YORK CITY.

The serious problem as to the proper administration of the New York police department should receive your immediate attention. The present condition is probably due to divided responsibility. I am not one of those who believe that because there is a disregard for existing regulations upon the part of some of those charged with police administration, the whole system is faulty and bad. With the present complicated system, the responsibility for this condition can be shifted from one to another, and it is therefore almost impossible for even the chief executive

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22 Chap. 704, passed May 3, fixed the salary of the Kings County clerk at $8,000. Chap. 705 fixed the sheriff's salary at $15,000; and chap. 706 fixed the registrar's salary at $8,000. See the Governor's memorandum of May 3, filed on the approval of these bills, *post*, p. 290.

In McGrath v. Grout (1902), 171 N. Y. 7, it was held that these acts were not special city laws under the Constitution, art. 12, sec. 2, which requires the transmission of such laws to the city affected, for action by specified city authorities.

23 The new charter, chap. 466, abolished the board of docks, and provided for the appointment of one commissioner of docks.

of the city to secure an honest and faithful enforcement of the law. Vice can never be entirely eradicated from the city of New York, or from any other city. It can however be held in subjection and not allowed to flaunt itself defiantly before the public. It can be curbed and held under such control that at least the citizens will feel that the department has done all that lies in its power to enforce the law. How can this be best accomplished, and what action shall be taken by the Legislature to obtain this result? In looking over the situation and understanding something of the workings of the department, I believe that a more perfect system can be secured by a more complete centralization of authority. At present we have, first, the Governor, charged with the execution and enforcement of the laws, whose sole power at present to obey the mandate of the Constitution lies in the suspension of the mayor and his removal when charges of official misconduct have, after a due hearing, been proven. While it is true that, during the administration of my predecessor, this power was ample to bring about the revocation of an order issued without warrant, and which for a time seemed to make a conflict between the State and city authorities imminent, yet it is possible that mayors may hereafter disregard such injunction until the injury has resulted, or an actual outbreak has occurred. It cannot therefore be said that the authority of the Governor is all that could be desired properly to discharge the duties imposed upon him. It may be claimed that the mayor himself possesses ample power as the chief executive of the city, but this is disproven when we recollect that the mayor has no authority to remove his commissioners after the expiration of six months from the beginning of his term of office. Therefore he is powerless except to try upon charges, and then the same condition that has been cited above may result with consequent disaster to the public. While it is true that a majority of the commissioners with the approval of the mayor may re-

move, yet this solution brings up again divided responsibility and renders it almost impossible to secure that discipline which is so desirable in a well-organized police force.

What remedy have we then for this manifest evil, which has brought the police force of the city of New York into such disrepute? A State constabulary has been suggested, but the strong disinclination upon the part of the other municipalities throughout the State to acquiesce in this solution renders this plan valueless. A metropolitan police system is open to the criticism that it is a violation of the principle of home rule guaranteed by the Constitution.[b] We are therefore brought to face this proposition, with no apparent remedy as yet suggested. In my opinion there should be a complete centralization of power. There is no necessity it seems to me for a commissioner who is not in effect as well as in name the absolute head of the police system of the city of New York. An efficient man, the choice of the mayor, as a single-headed commissioner, with all the powers now possessed by the chief of police, would at once narrow down the responsibility and place it within the power of the Chief Executive of the State to hold accountable the mayor and the commissioner thus appointed. This suggestion, if given effect by legislative enactment, would, in my opinion, be no violation of the principle of home rule. It is moreover right that inasmuch as the Governor is equally responsible he should have an authority over this department, because the people, not only of New York city, but of the whole State, are interested, and certain powers to be exercised only in cases of emergency should be conferred upon him to enable him to carry out the constitutional mandates.

I recommend therefore the substitution of a single-headed police commission for the city of New York, such commissioner to be the chief of police of the city, to be

[b] Const. 1894, art. 10, § 2.

appointed by the mayor and subject to removal either by the mayor or the Governor, and that the present office of a separate chief of police be abolished.[24]

CITY EMPLOYEES.

The decision of the Court of Appeals, which in effect makes the tenure of office no longer secure, should receive your early consideration.[c] It has come to my knowledge that the employees of various city departments have been coerced in numerous instances under the ruling as now laid down by the Court of Appeals. I recommend that an amendment be enacted making the section of the Civil Service Law affected by that decision, legislative. This is due to the man who works by the day as well as to the higher paid officials. Both should have the same protection under all circumstances, and the full intent and purpose of our Civil Service laws be given effect.[25]

RAMAPO WATER COMPANY.

Under chapter 985 of the Laws of 1895 as amended, the Ramapo Water Company was given the power of condemnation for the purpose of securing to it the water and lands

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[24] The Governor's recommendation as to the head of the New York police department was embodied in the revised charter, L. 1901, chap. 466, section 270, which provided that the police department should be under the immediate supervision of one police commissioner, to be appointed by the mayor, and subject to removal by the mayor or the governor. Existing police boards and police commissions in the various parts of Greater New York were abolished. The office of chief of police was discontinued.

[c] See People ex rel. Percival v. Cram (1900), 164 N. Y. 166.

[25] The revised charter of New York, L. 1901, chap. 466, amended section 1543 of the charter of 1897, chap. 378, in relation to the power of removal, by providing that "no regular clerk or head of a bureau or person holding a position in the classified municipal civil service subject to competitive examination shall be removed until he has been allowed an opportunity of making an explanation; and in every case of a removal, the true grounds thereof shall be forthwith entered upon the records of the department or board or borough president, and a copy filed with the municipal civil service commission."

necessary for its purposes. During the year 1899 an attempt was made to enter into a contract with this company by the municipal board empowered to make such contracts. This proposition when presented to the citizens of New York was severely criticised by them, and the question of continued municipal ownership of their water supply was thus brought to their attention. The Legislature of 1900 enacted a law which made the consummation of such a contract impossible without the unanimous consent of those empowered to make such contract. The ownership of water rights sufficient to provide the city of New York with an ample supply of pure and wholesome water should be entirely under the control and direction of that municipality. By what now seems to have been an unfortunate omission in the original charter of the city of New York, the city is not given the same rights that are afforded other municipalities for securing an additional water supply. It should therefore be your first aim to correct and repeal such provisions of the law as interfere with the free and full exercise of such powers by the city of New York, and then to place it upon an equality with the other cities of the State. I ask the speedy enactment of such laws and the repeal of all conflicting laws. In this legislation due regard should be given all rights involved, reserving the preference however for the city wherever there shall be a conflict between the rights now possessed by private corporations and those desired by the municipality.[26]

BUREAU OF ELECTIONS.

I recommend the entire separation of the bureau of elections from the police department of the city of New York,

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[26] Chap. 122, passed March 19, repealed the Ramapo Water act of 1895, chap. 985. The new city charter, L. 1901, chap. 466, re-enacted in substance the provisions of the existing charter relative to the power of the city to obtain a supply of water, and acquire water rights by purchase or condemnation, and added a provision authorizing the acquisition of such water rights in any other State for the use of the city.

and the creation of a bi-partisan board to be selected in the same manner as the minor election officials in the city of New York, *i. e.*, that appointments be made by the mayor of the city on the certification of the appropriate committees of the two great political parties, charging such board with the duties now possessed by election boards. I believe this suggestion is in line with the original bi-partisan idea in the conduct of elections.[27]

I recommend the enactment of an amendment to the law whereby all lodging-houses shall be required to register and secure from the board of health permits; that such records be open to the public, and that they be compelled from time to time to report to the superintendent of elections of the Metropolitan District the names of and other information concerning their permanent guests.[28]

GOOD ROADS.

Under the Higbie-Armstrong Act for the building of good roads, the State of New York appropriated the sum of $150,000 last year. The number of petitions received by the State Engineer and Surveyor from localities desiring to take advantage of the provisions of that act shows a general interest in the subject. Twenty-three roads, covering a mileage of 53.58 have been constructed or are now in process of construction, at a cost of $377,594, one-half of which expense was borne by the localities in which the

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[27] Chap. 95, passed March 13, amended the general Election law of 1896, chap. 909, by adding to section 11 a provision creating a bi-partisan board of elections in the city of New York, to be appointed by the mayor. Members of the board were to hold office two years. The same act abolished the bureau in the New York police department, known as the general bureau of elections, and transferred its powers and duties to the new board of elections.

[28] As to the register of lodging houses, see the new charter, L. 1901, chap. 466, section 1312, and as to reports to the superintendent of elections, see the Metropolitan Elections Law, L. 1898, chap. 676, sec. 9, as amended in 1905, chap. 689.

roads are located. Surveys have already been made which if adopted will call for an appropriation by the State of $1,222,000.

It would be inexpedient for the Legislature to appropriate this sum in any one year, but it is evident that if the building of roads is to continue a much larger appropriation will be necessary this present year. An amendment to the law which would provide that the State should pay the entire expense of construction by the issuance of bonds, levying upon the counties their proportion for the benefits received, would expedite and reduce the cost and extend the time for payment over a longer period and at a lower rate of interest. A systematic plan should be adopted however for the buildings of roads, so that all parts of the State should be equally benefited. We should effect the reopening of the old State roads, which would be of much greater advantage to the citizens of all parts of the State than the building of many such roads in any one locality.

With State aid for a common road through all counties the building of other roads under a local money system by the counties would follow, and in a short time good roads would come without the great expense which must necessarily follow and the discrimination which is probable under a full State system would be avoided.[29]

CANALS.

During the administration of my predecessor a Commission was appointed by him for the purpose of taking into consideration the improvement and enlargement of the

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[29] The supplemental supply bill, chap. 642, appropriated $200,000 for good roads.

The Constitution was amended in 1905 by adding to art. 7, a section, 12, authorizing the creation of a State debt not exceeding at any one time $50,000,000 for the improvement of highways, and by an amendment to section 4 of the same article, adopted at the same time, bonds might be issued running fifty years. Section 12 authorized the legislature in its discretion to apportion the expenses, or any part thereof, among the counties or towns in which such highways may be situated.

present canal system of the State. A report from this Commission was made to the State Legislature of 1900.* Acting upon the recommendations contained in that report the Legislature appropriated the sum of $200,000, chapter 411, Laws of 1900, for surveys and estimates of the cost of such enlargement or improvement of the canal system. The report of these surveys and estimates will be ready for submission to the Legislature about the first of February of this year. I shall therefore defer such recommendations as I have to make on this subject until the transmission of that report.[30]

PALISADES.

The work of the Commissioners of the Palisades Interstate Park has been eminently successful, and I desire to commend to your careful attention their forthcoming report and urge your action on their request for financial support, in a spirit of liberality commensurate with the importance of the undertaking and the great public interest therein. In anticipation of their report I am able to state that the $10,000 appropriated last year for the purpose of defraying the expenses of the Commissioners and perfecting surveys and maps have been used entirely as the nucleus of a fund for acquiring and closing down the most destructive of the quarries. Blasting at these quarries stopped on Christmas eve, in accordance with the provisions of option contracts binding until June 1st next.

The Commissioners are securing options at conservative prices on several miles of the Palisades, and through the generosity of a number of public-spirited gentlemen have obtained subscriptions amounting to upwards of $120,000, to be used for the purpose of taking up the quarry options, contingent upon a State appropriation sufficient to close the options upon the remainder of the property now under

* See *ante*, p. 130.

30 See special message of March 15, transmitting the report of the State Engineer and Surveyor on canals, and note 44, *post*, p. 244.

contract. A practical and business-like solution of the question of the preservation of the Palisades is thus presented and the project awaits only the proper action of the Legislature for its consummation.[31]

AGRICULTURAL.

The appropriation of the State last year of a sum sufficient to discharge the obligations of the State Fair, bringing it under the control of a commission appointed by the State, has proved wise, and the encouragement thus given has resulted in the most successful fair that has been known in recent years. Sufficient appropriation should be made to continue this work as a State institution during the coming year.[32] The various laws passed empowering the Commissioner of Agriculture to protect consumers from adulterated food products have been thoroughly enforced, and the results in the main have been satisfactory. You are referred to the report of the Commissioner of Agriculture for a detailed statement of the work of this department.

The sugar beet industry of the State should still be encouraged and the bounty continued. It is anticipated that this year about 9,000,000 pounds of beet sugar will be produced in our State.[33]

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[31] Chap. 504, passed April 23, provided that five members of the Palisades Commission, as established by L. 1900, chap. 170, might be residents or citizens of the State of New Jersey, and confirmed the appointment of commissioners then in office. The act also provided that the commission might receive, by gift, contribution, or bequest, moneys, stocks, bonds, securities or other property, and own, hold, invest or otherwise use the same for the purposes of the park.

Chap. 690, passed May 3, appropriated $400,000 for the purposes of the commission. For a sketch of the movement to preserve the Palisades, see *ante*, vol. 9, p. 735.

[32] Chap. 356, passed April 16, appropriated $100,000 for general purposes connected with the State fair, and the supply bill, chap. 645, appropriated $25,000 for the payment of premiums.

Chap. 224, passed March 28, amended the provisions of the Agricultural law, relative to the time of holding the State fair.

[33] Chap. 331, passed April 12, appropriated $100,000 for sugar beet bounties.

Farmers' Institutes have been conducted successfully and are of great benefit to the farming localities. The work of the stamping out of tuberculosis and glanders among the cattle should, in my opinion, be transferred to this department, because it comes properly within the scope of its duties and because it can be done with less expense.[34]

NATIONAL GUARD AND NAVAL MILITIA.

I am pleased to report that the National Guard is in a condition entirely satisfactory, and under the existing regulations governing it has reached such a degree of efficiency that it may be safely relied upon to perform every duty that may fall to it. Every man owes his country a duty, and it ought to be both from a patriotic and physical standpoint the aim of every citizen to serve his State for the term which is usually given by those who enter the National Guard. The National Guard was not intended as a military reserve of the General Government and it cannot in any way be so regarded. Separate companies and regiments are made up of men who through social or business relations are usually known to each other. They are willing to give their services to the State if such a call is made upon them. The Guard should never be expected to do anything else than was originally intended, that is, to suppress local troubles and repel foreign invasion, and strengthen the Federal arm only until a sufficient force can be recruited and be put into the field to replace them, but the Guard should never be broken up. This was the theory under which it was called into service during the War of the Rebellion, and it should still be our aim so to regard it. The instruction which they are now receiving at the State camp, giving as it does to every man a practi-

[34] The appropriation act, chap. 644, authorized the expenditure of $20,000 for the maintenance of farmers' institutes. As to supervision of tuberculosis and glanders, see note 10.

cal insight into the duties which he may be called upon to discharge, teaching him the necessity of looking after himself, are calculated to raise the standard of efficiency. The display of this force at times, even though no actual outbreak occurs, has a tendency to curb lawlessness and bring respect for the law. This was notably the case in the Croton Dam strikes last year, where the mere assembling of the troops was sufficient to prevent what might have been a serious outbreak. I trust that the time may be far distant when the services of the National Guard may be necessary in our State. Mediation and arbitration it seems to me should be our aim rather than the exhibition of armed force. Yet we must always recollect that there may be occasions when every other remedy may fail, and as a last resort we may be compelled to rely upon the National Guard for the preservation of life and property. The force now consists of about 14,000.

A faithful adjunct and auxiliary of the National Guard is the Naval Militia. The Naval Militia is as important in its way as are the infantry and other arms of the State. Their services may at any time become necessary, and they form the nucleus for building up such a naval force as may be needed for the protection of our harbors. The total amount appropriated for the National Guard and Naval Militia last year was $559,920.71. This is exclusive of appropriations made for buildings. I desire in this, as in every other branch of the State government, to recommend economy where no serious impairment of the service may result.

INSURANCE DEPARTMENT.

The Superintendent of Insurance reports that there are 253 Fire, Marine, Life, and Casualty Companies doing business in this State, with assets of $1,943,004,411, and liabilities, except capital stock, of $1,515,309,737, and capital stock of $105,122,017. These companies report a sur-

plus of $353,326,119, and risks in force $32,925,249,575. There are fifty-five fraternal beneficiary societies which show receipts for the year 1899 of $33,074,648, and disbursements of about $31,000,000. Fifty-three nonfraternal associations show receipts of $11,382,831, and payments for claims $7,956,803, and for expenses of $3,398,026. The work of this department is constantly on the increase, and unusual efforts are necessary in order to protect the rights of the policyholders and members of the beneficiary associations. I have no suggestions to offer concerning this department.

PUBLIC UTILITIES.

During the last few years there has been considerable discussion in regard to the municipal ownership of public utilities. It is proper in the consideration of this question to view it however from the standpoint of those interested in private corporations now owning such utilities and of the taxpayers of the municipality.

Undoubtedly cities have been benefited in the past from competition between private corporations, which for a time had the effect of lowering prices, which competition however, usually results in a combination of such competing interests. Then prices are raised again in order that dividends may be made upon a capitalization far in excess of that warranted by business possibilities.

Then it is that dissatisfaction arises and the demand for municipal ownership is most urgent. This unsatisfactory condition could have been avoided had the power to authorize the formation of a new company been lodged in some competent authority. And it would be possible with such authority in the event of the desire by a municipality to acquire such properties, to protect the rights of both the corporation and the municipality. The question is one properly deserving the attention of the Legislature. Those corporations owning and controlling public utilities

are all organized under the Transportation Law. They are all subject to the same provisions, with this exception — that the railroad corporations have now been placed under the control of the State Railroad Commission. I am convinced that the execution of the law which created that commission has been of such a beneficial character to the citizens at large that none would now think of returning to the former method of bringing to the Legislature, there to be hurriedly acted upon, questions of such great importance.

This subject is one deserving the wisdom and attention of men who may be specially charged with the duty of investigating the desirability for the creation of such corporations, as well as the question whether they are created for the purpose of threatening or attacking existing corporations, or created in their interests. The Railroad Commission, if charged with this duty, could readily determine whether there was a necessity for another company, or whether the desired result could not be accomplished by enforcing a reduction of rates or compliance with other reasonable requests of citizens. In the event of a desire for municipal ownership this board could act as a mediator and conserve all interests equally.

I recommend therefore that gas and electric lighting companies, and the questions relating to their organization, administration, and control, shall be placed in the hands of the Railroad Commission, care being taken to provide such limitation on their discretion as will secure due regard to the wishes of every locality and prevent the Commission's sanctioning the creation of such corporations without the consent of the local authorities.[35]

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35 Chap. 731, passed May 11, amended section 21 of the general Railroad law by authorizing an electric light and power company on prescribed conditions to construct, own and operate a railroad not exceeding twenty-five miles in length.

A State commission of gas and electricity was created by L. 1905, chap. 737, to be composed of three commissioners appointed by the Governor and

BANKING DEPARTMENT.

The number of State banks of deposit and discount has had a net decrease of seven during the year, the trust companies of two and the savings banks of one. The total resources of the State banks of deposit and discount on September 4, 1900, were $351,080,252. The trust companies reported a gain in resources from January to July aggregating $124,293,165, and the savings banks an increase of $37,460,061 in the same period. The statement may be made unreservedly that as a whole the banking institutions of the State are in excellent condition. The total resources of the State banks of deposit and discount, of the trust companies and of the savings banks at the dates of their latest reports amount to $2,185,433,300, which is an increase of $121,116,072 from the preceding year.

On the part of some of the savings and loan associations in the State, among those which are classified as "nationals," there has been a tendency to engage in business which brings disaster. Besides the payment of extravagant salaries to their officers and a waste of money in maintaining luxurious offices at a large cost for rent, abuses of the gravest character obtain in some of these associations. Real estate owned by officers individually is purchased by such associations at prices advantageous to the management but ruinous to the institutions. Speculative dealing is undertaken in real estate, which even where the intention is honest is almost sure to cause loss and embarrassment. Associations are given over to the control of a few men by agency contracts, under which all earnings above an agreed percentage are taken by the

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Senate, with general supervision of gas and electric light and power companies.

This act was repealed by the Public Utilities law of 1907, chap. 429, and the powers and duties of the commission of gas and electricity were transferred to and devolved upon the public service commissions created by the latter act.

officers in lieu of salaries; and it goes without saying that the managers realize their proportion regularly in cash while the shareholders generally get only paper profits. Withdrawals are paid upon a basis destructive to the hopes and interests of the persistent members. These and similar methods, which when not actually dishonest are at least unwise and unsafe, cannot but wreck any institution which persists in employing them, and the record for the past year shows that several associations were sacrificed to them, having gone into liquidation through a receiver or otherwise, and subjecting many innocent investors to losses which mean embarrassment and hardship. Such practices ought not to be possible under the law, and legislation is recommended which will serve to prevent them.[36]

STATUTORY REVISION.

In 1889 the Statutory Revision Commission was appointed to prepare bills for the consolidation and revision of the statutes (Laws 1889, chap. 289). In 1895 the Commission was designated to revise the Code of Civil Procedure (Laws 1895, chap. 1036). The Commission began work upon the General Laws in 1889 and since that time forty-eight of their General Laws have been enacted by the Legislature. At the last session of the Legislature the Commission presented certain new General Laws and amendments to nearly all of the General Laws previously enacted, which bills in the judgment of the Commission were necessary to bring the General Laws down to date. The Commission also presented eleven bills as a plan for the revision of the Code of Civil Procedure. All of these bills introduced in 1900 were referred to a special committee of the Assembly, and upon the adjournment of the

[36] In 1903, by chap. 84, a section, 195b, was added to the Banking law, limiting the expenses which might be incurred, or paid by a loan association in any year. The section was amended in 1905, chap. 673, and in 1906, chap. 573.

Legislature a joint committee of Senate and Assembly was appointed to consider them and report thereon to the Legislature of 1901. On January 1, 1901, the Statutory Revision Commission went out of existence by legislative enactment (Laws 1900, chap. 664). The plan of Code revision proposed by the Statutory Revision Commission has been disapproved by bar associations of the State on the ground that it does not purport to revise the practice provisions of the present Code. The plan proposed by the committee contemplates the removal from the Code of Civil Procedure of all the provisions not relating directly to practice and the assignment of this material to a proper place in the General Laws, and to make such obviously necessary changes in pleading and practice as may be agreed upon. I am informed that the revision of the General Laws reported by the Statutory Revision Commission is not based directly upon the session laws, and I believe that no revision can be complete which does not take into account the entire field of legislation and dispose of all laws. Our laws should not remain in their present confused condition. To this end I suggest that a special committee be appointed in each house of the present Legislature to take charge of the bills referred to the joint committee last session; and further recommend that a special committee be appointed to complete the revision of the Code of Civil Procedure and the statutes upon plans to be agreed upon by the committee in conference with the bar associations of the State, with instructions to report said revision to the Legislature of 1902.[37]

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[37] The legislative records do not show any report by the joint legislative committee on statutory revision appointed in 1900, and referred to in the Governor's message.

On the 21st of February, 1901, the Assembly appointed a select committee on Statutory Revision bills. This committee submitted its report on the 22d of April, 1901, making various suggestions concerning statutory and code revision. [See Assembly Document No. 71.]

DIVORCE LAWS.

During the past year a scandal in reference to the administration of the divorce laws of the State was exposed, and it became apparent that in the hands of unscrupulous men the law could be so manipulated that fraud was easily possible. Marital relations should be sacred and only dissolved when statutory causes have been clearly proven. It seems to me than an amendment mandatory in its character should be enacted which would provide that the service of the summons in such an action should be proven before and the case heard by the trial judge in open court. This would correct the abuses now existing.[38]

STATE LUNACY COMMISSION.

On October 1, 1900, there were 22,088 inmates in the various State hospitals. The number on October 1, 1899,

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The supply bill of 1902, chap. 594, appropriated $1000 for the expenses of a special committee of fifteen, to be appointed by the Governor "to report to the next Legislature concerning the condition of the statutes and laws of this State." This committee submitted its report to the Assembly on the 21st of January, 1903. [See Assembly Document No. 4.]

In this report the committee briefly outlined the history of statutory revision, beginning with the commission of 1870, and substantially approved the plan of revision proposed by the commission of 1889, and which had for the most part been worked out when the commission was discontinued in 1900. The committee recommended the continuance of the work of revision by means of a "board of statutory consolidation."

This board was created in 1904, by chap. 664, with power to "direct and control the revision, simplification, arrangement and consolidation of the statutes of the State," following so far as practicable the plan and scope of the general laws, but without changing statutes in substance except those relating to procedure which might be adapted to existing conditions.

[38] The Legislature did not adopt the Governor's suggestion as to trials in divorce cases, but the next year, 1902, chap. 364, the Code of Civil Procedure, section 1774, was amended by providing that the decision of the court, or the report of the referee in a divorce case must be filed within fifteen days after the party is entitled thereto, prohibiting the entry of final judgment of divorce until after the expiration of three months, after the filing of such decision or report, and requiring the entry of final judgment within thirty days after that period; but these provisions were subject to modification by the court for sufficient cause.

was 21,435, showing an increase for the year of 653. This seems to be about the average increase for the past five or six years. The expenditures for the maintenance of the State hospitals for the past fiscal year was $3,599,631.56, or at the rate of $165.38 per capita, as against $178.42 for the previous year. This decrease was brought about by an arbitrary reduction in the number of employees, and has not seemed to cause any serious impairment in the proper administration of the various hospitals.

The total expenditures for construction work and repairs of an extraordinary character during the past year have been $662,948.90. The Commission reports that they have $20,000,000 invested in buildings and equipments. In other words it has cost $909 for each patient for buildings and equipments. This sum indicates to my mind that there has been great extravagance in the matter of buildings and equipments. While it is not possible to undo what has passed, yet it is certain that in the future greater economy can be exercised in appropriations for these purposes. The Commission requests an appropriation for the accommodation of 500 patients at Rochester and 200 patients at Gowanda. I do not favor this appropriation unless it can be shown that there is an absolute necessity in the near future for these buildings, and this appears to be very questionable.

The old system of permitting the board of managers to be in absolute control of their various institutions was an incentive to economy and general good management, and if again instituted would probably result in additional saving to the State. At present the boards of managers are mere figure heads. The stewards and superintendents are called to Albany bi-monthly. A careful perusal of all that has been done by them at these meetings convinces me that the advantage gained is not commensurate with the expense incurred. It seems to me that all of their business could be equally well prosecuted if they remained at

their various institutions instead of coming to Albany. We should be liberal, but not extravagant. We should not permit a false economy to stand between the State and the proper care of the patients, but stories of extravagance that have come from the institutions are such as to justify the most rigid investigation by you as to the management of the State hospitals for the insane. I believe that with no harm to these institutions, a saving of at least three-quarters of a million dollars can be effected in this department.[39]

NATURALIZATION.

My attention has been called to the fraudulent use of naturalization papers in recent elections. A practice which is more or less extensive has grown up whereby naturalization papers issued to one man are illegally used by another for the purpose of registering and voting. The necessity for a remedy is apparent, and I recommend the enactment of an amendment to our present law concerning naturalization so as to provide that the papers shall contain a description of the person to whom they are issued. This would make it possible properly to identify and prevent fraud.[40]

EDUCATION.

The State's concern in the work of the Board of Regents and in that of the Department of Public Instruction is that the two should accomplish without friction the objects for which they are maintained. Those objects while dis-

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[39] See 1902, note 1, for the statute abolishing boards of managers of State hospitals, *post*, p. 332.

[40] On the 29th of June, 1906, Congress enacted a revised naturalization law, specifying particularly the courts authorized to entertain applications for admission to citizenship, prescribing various forms to be used during the course of the proceeding, including the declaration of intention, the application, and the affidavit of witnesses, with numerous details of procedure. The act practically superseded State laws and regulations on the subject of naturalization.

tinct are not conflicting. Each department is now in a satisfactory condition. Between them it is believed an harmonious temper now prevails. There are a few points at which the labor of the two is on parallel, if not identical lines. That supplies no necessary reason for antagonism. On the contrary, it commends a mutual economy or exchange of effort. Public opinion will censure any policy or persons found to be the cause or occasion of avoidable discord between these bodies.

Each department will I assume set forth to the Legislature its estimates of its needs and its reasons for them. Each department can well make its executive officer its sole or main medium for communication with the Legislature. Results hardly short of scandal have marked a neglect of this course in the past.

I recommend the considerate treatment of the budgets presented by each department, especially in cases in which no needless increase of amounts is asked. A year of business, not of battle, of concert of action, not of contention, would be a year well spent in the State's educational field.

RAILROAD COMMISSION.

The Railroad Commission in addition to the other duties imposed upon it has been engaged in the work of abolishing grade crossings, under the appropriation made last year. This work should continue and the Legislature should make an adequate provision for that purpose.[41]

THE PAN-AMERICAN EXPOSITION.

The Pan-American Exposition, which is to open in Buffalo on May 1st, has received the cordial support of both the National and State governments. It should be

[41] The appropriation act, chap. 644, authorized the expenditure of $100,000 by the railroad commission for grade crossing purposes. The supply bill, chap. 645, reappropriated $69,726.90 for the same purpose, this being the unexpended amount of the appropriation made by L. 1899, chap. 570.

your duty to aid in every way commensurate with the necessities in making this exposition such a success as will redound to the credit of the State.

Expositions of this character have a tendency, through the knowledge acquired of the resources of the various countries participating, to bring about an interchange of business that is of lasting benefit to the commercial interests of all. Our State is to be congratulated upon the enterprise which conceived and the success which promises to come as the result of this great exposition.[42]

GENERAL.

The reports from all the departments will be submitted at the proper time for the information of the Legislature, and it is not therefore necessary for me to refer to them in detail.

The Legislature should at this, the beginning of a new century, aid in every way possible in the development and prosperity of the State. Economy should prevail, yet nothing should be done that may be regarded as inimical to the rights of the citizens and the vast interests we represent. Upon the Legislature the full responsibility must rest for the passage of all laws. It will be my aim, so far as possible, to aid in the work with which you are charged, withholding my official sanction only from such measures as may seem to me to be contrary to public policy. With a desire for the most cordial relations between the Executive and the members of the Legislature, I feel that I may at all times be assured that the objects for which we are

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[42] The supplemental supply bill, chap. 642, appropriated $50,000 for the State exhibit at the Pan-American Exposition; also $1,000 for a model of the quarantine plant at New York; also $2,000 for the erection and equipment of a representative modern common school building on the exposition grounds.

Chap. 238, passed April 2, authorized the Pan-American Exposition company to issue second mortgage bonds to an amount not exceeding $500,000.

striving have the highest motives, and the desire to give equal rights and protection to all interests that tend to the welfare and advancement of our Commonwealth.

B. B. ODELL, JR.

SPECIAL MESSAGES.

January 17. To the Assembly. Transmitting a statement of pardons, commutations and respites for the year 1900.

January 21. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 21, 1901.

I herewith transmit the report of the Charter Revision Commission appointed during the term of my predecessor.* The report gives evidence of careful study and the recommendations are in the main calculated to bring about an improvement in the administration of the affairs of the greater municipality.

While some of its recommendations are not in accord with other pending legislation, yet if such measures should be approved by the Legislature rather than the recommendations made in these particular instances by the Charter Revision Commission, they can be incorporated into the charter without in any way interfering with the general plan of revision. It is unfortunate perhaps that the Commission did not more fully meet the expectations of the taxpayers of the city of New York in their recommendations for economy instead of confining themselves principally to the administrative duties of the various departments. This omission upon their part should not restrain you however from putting into the new charter such changes as will compel greater economy in the administration of the affairs of the city of New York.

* See *ante*, p. 122.

There are a few suggestions made by the Commission which I believe are contrary to good policy, and should not be enacted into law. The recommendation of a single head for the police department is correct so far as it goes, but considering that the same authorities who are now responsible for the condition of affairs in New York will for the next year continue in control, no reformation would seem possible except some other provisions are made for other control under exigencies which may arise at any time.

The framers of the Constitution have prohibited action by either the Legislature or the Executive within given lines, yet where authority has been reserved for the Legislature and for the Executive, under certain conditions that power is at times surrendered to municipal authorities. This is notably the case with the mayor of New York city. The Constitution does not provide specifically that he may be removed by the Governor, nor does it say he shall not. But the Legislature has created a charter which gives to the Governor the absolute power of removal of the mayor on charges. The Constitution provides that certain county officers may be removed by the Governor, and their successors are appointed by him, as are other elective officers unless otherwise provided.[d] Yet the present charter which has been in operation more than two years provides that the comptroller may be removed by the Governor of the State, but the same provision as to fiduciary officers in other counties does not prevail, and the power to fill such vacancy as may be caused by the Governor's action is lodged in the mayor. This power is conferred by the State on the municipality. Yet it cannot be claimed under these conditions that the mayor should always exercise this power, nor that it is not within the province of the Legislature to take it from him should it be deemed wise in the interest of good government.

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[d] Const. 1894, art. 10, § 1.

Therefore I believe that the suggestions made in a former communication to the Legislature in relation to police control go further in the direction of better government than the recommendations herewith submitted and are not inhibited by the Constitution.

The suggestions of the Commission for the fixing of salaries of employees, etc., by the Board of Estimate and Apportionment and by the Board of Aldermen, are not in my opinion sufficient for the protection of the taxpayers. We must understand that the same objection as to control exists as has been outlined in the case of the Police recommendations. The limit of salaries should be fixed by the Legislature and it is your duty to rectify and correct existing evils before continuing to this Board the power which it now possesses.

I do not believe that portion of the revised charter which permits the Board of Aldermen to determine the salaries to be paid to school teachers is desirable, because the object sought will not be secured and the schools will be thrown into politics and their efficiency impaired. The fixing of salaries should be left to the local boards of education, subject to review by the Central Board of Education provided for in the proposed charter. It would appear that action should be taken by the Legislature, fixing the maximum and the minimum amounts which should be paid to any teacher, and that the determination of the salaries within these limits should be left to the local boards, with veto power by the Central Board of Education.

I do not believe that it is in the interest of economy to increase the representation in the Board of Aldermen, and the desired end would not be attained by this large number in the Board. It seems to me that all that could be desired would be accomplished by a smaller Board, and this would save the city, as compared with the recommendations of the Commission, between $60,000 and $70,000 per year, a not inconsiderable sum.

What the people desire is fewer officers, lower taxes and better government, and this the revised charter does not unfortunately fully provide for. I believe however that in the main the recommendations of the Commission should be adopted, and immediate consideration given by you, looking to the perfection of these amendments to the local laws of New York City.

I have faith that your action will be along lines that will merit the approval of the citizens of New York City, and that the outcome of your deliberations upon this subject will be better government and a more economical administration for the Greater City. [See note 21.]

B. B. ODELL, JR."

January 23. To the Assembly:

Veto of a bill entitled "An act to provide for increasing, extending, improving and purifying the water supply of the village of Goshen in the county of Orange and State of New York."

"The bill authorizes the president and trustees of said village to borrow a sum of money not exceeding ten thousand dollars for the purpose of increasing, extending, improving and purifying the water supply of said village, and in addition provides that they may borrow not exceeding the sum of two thousand dollars in any one year for the purpose of extending the water mains or pipes in said village or for further increasing, extending, improving or purifying said water supply.

Under the provisions of the general village law, chapter 414, Laws of 1897, the village authorities have the control and supervision of the water works and it is made their duty to keep them in repair, but it is also therein provided that they shall not expend for such purposes a sum to exceed one thousand dollars in any one year, in villages of the second class, unless expressly authorized by a proposition adopted at a taxpayers' election.

The purpose of the general village law was to provide that whenever it was desired to make extraordinary expenditures of money for village purposes, the taxpayers of the village should have an opportunity to express their opinion upon the same at a special election called for that purpose.

In my judgment this provision is a very proper one, and the practice of applying to the legislature for special acts relieving villages in certain instances from complying with this provision is one which should not be encouraged. If the work referred to in the proposed act is necessary and desired by the taxpayers of the village of Goshen, there will be no difficulty in obtaining a vote authorizing the expenditure specified. If it is not desired by them, the permission should not be given by a special act of the legislature authorizing it.

For these reasons I think the bill should not receive Executive approval."

The bill was not passed over the veto.

January 31. To the Assembly:

Veto of a bill entitled "An act to limit the territory of the village of Hastings-on-Hudson by exempting from the limits of the said village certain property required for state highways."

"Although the Constitution* may not prohibit the passage of an act changing the boundaries of a village, yet the purpose which is really sought to be accomplished by this change is, in my judgment, not a proper one. The effect of the act, by placing certain highways of the village outtion benefits conferred by chapter 115 of the Laws of 1898, generally known as the Good Roads law, without its bearing a proper share of the expense.

* Const. 1894, Art. 3, § 18, incorporation of villages.

The Good Roads Law provides that no street or highway within the bounds of a city or incorporated village shall be improved at the expense of the State. If this act should become a law it would establish a precedent which would undoubtedly be followed by other cities and villages which would also seek to have what are virtually their own streets improved at the public expense by placing them outside their own boundaries. This would open a field for the expenditure of the money of the State which was not contemplated in the passage of the Good Roads act and should not be permitted.

For the reasons above stated I think the bill should not receive Executive approval."

The bill was not passed over the veto.

February 5. To the Assembly:

Veto of a bill entitled "An act to provide for the system of taxation for working and repairing highways in the town of DeWitt in the county of Onondaga during the year nineteen hundred and one."

"Section fifty-two of the General Highway Law provides that when a town shall have voted to change the system of working and repairing its highways from the labor to the money system, such change shall take effect at the next annual meeting of the board of supervisors after the town meeting at which it was so decided to make the change.

The town of DeWitt decided to make the change from the labor to the money system at its annual town meeting held on the 6th of November, 1900, and the purpose of this act is to postpone the taking effect of such action in this town for one year or until the annual meeting of the board of supervisors of Onondaga county for the year 1901.

In my judgment the legislation proposed is in violation of the provisions of section eighteen of article three of the State Constitution, which prohibits the Legislature from passing a private or local bill laying out, opening, altering, working or discontinuing roads, highways or alleys; and for this reason should not receive Executive approval."

The bill was not passed over the veto.

February 14. To the Assembly:

Veto of a bill entitled "An act to change the corporate name of the Troy Young Men's Association to the Troy Public Library."

"This is unnecessary legislation. Sections 2411 and 2417 of the Code of Civil Procedure make ample provision for changing the name of corporations by proceedings in the courts, and the results sought to be accomplished by this bill can be achieved under the provisions of the Code of Civil Procedure.

For this reason the act should not receive Executive approval."

The bill was not passed over the veto.

February 19. To the Assembly:

Veto of a bill entitled "An act authorizing the railroad commissioners of the town of Mamakating, Sullivan county, New York, to issue bonds to retire outstanding bonds as they may become due."

"This is unnecessary legislation, because section seven of the Municipal Law makes ample provision for the issuing and refunding of the bonds referred to in the proposed act, and no additional security would be conferred by the enactment of the proposed legislation."

The bill was not passed over the veto.

February 20. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill legalizing action of boards of supervisors in any county in this State in changing the time of holding town meetings. See next certificate.

February 21. To the Legislature: Certifying to the necessity of the immediate passage of the foregoing town meeting bill. Second certificate.

The bill was passed and became chap. 32 on the 22d of February.

February 21. To the Assembly:

Veto of a bill entitled "An act to confer jurisdiction upon the Court of Claims to hear, audit and determine the alleged claim of Sarah E. Leith against the State for damages alleged to have been sustained by her, and render judgment therefor."

"The purpose of this act is to confer jurisdiction upon the Court of Claims to hear, try and determine the claim of Sarah E. Leith for damages alleged to have been sustained by her by reason of the improvement of the Delaware Turnpike in the county of Albany, in the laying out and construction of the said road in Normansville in connection with such improvement, and to make an award and render judgment against the State in favor of the claimant.

Chapter 115 of the Laws of 1898, known as the Good Roads Law, provides that in case the boundaries of any proposed highway shall deviate from any existing highway, the board of supervisors must make provision for securing the requisite rights of way prior to the commencement of such improvement. Such rights of way are to be secured either through agreement with the parties through whose premises the proposed highway is to run, or by condemnation proceedings. Under the first method the damages would be adjusted by agreement between the parties,

and under the second, would be fixed by commissioners subject to confirmation by the court. The State is also to pay one-half of the expense of construction, but it is expressly provided that the people of the State of New York shall in no case be liable for any damages sustained. The statute does not contemplate that the State shall pay any portion of the expense of acquiring the right of way or of resulting damages. It would seem, in view of the provisions of the statute, that the party named in the proposed law has no claim, legal, equitable or moral against the State. Under these circumstances I do not think that this bill should receive Executive approval."

The bill was not passed over the veto.

February 25. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 25, 1901.

I herewith transmit to you the report of the Tenement House Commission which was created under authority of chapter 279 of the Laws of 1900.*

The subject which this commission has had under consideration, and to which it has devoted a great deal of time and painstaking labor, is one of the most important claiming your attention. More than two-thirds of the inhabitants of the city of New York now dwell in houses which have been defined by law as tenement houses. Frequent attempts have been made by the Legislature, as the result of investigations made by legislative commissions and by philanthropic organizations, to improve the conditions surrounding those residents of New York and the other large cities who are obliged to live in the congested centers of population. While the legislation enacted as a result of

* See *ante*, pp. 96, 146.

such investigations has in some degree improved the conditions which they are aimed to remedy, yet the rapid increase in the number of these buildings renders the subject of more vital importance to-day than ever before.

The Commission has been actuated by the highest motives in undertaking this work, and has prosecuted its investigations with energy and intelligence. They have codified existing and proposed laws bearing on the subject, and recommend them as amendments to the present charter of the city of New York. They also suggest an amendment to the General Health Law. Their investigation has shown that discretionary power as it relates to tenements, which is now lodged in the police board, the board of health, the fire department and the building commission in the city of New York, leads to complications, friction and non-enforcement of the laws. The result has been the erection of buildings without proper regard to sanitary and hygienic conditions. In lieu of this divided authority now lodged in the various municipal bodies as enumerated above, the Commission recommends the creation of a new department to be known as The Tenement House Commission, to whom shall be submitted all plans for tenements, and whose approval must be obtained before such buildings can be occupied after completion, still leaving to the building department of the city the inspection of the structural part of the work. They propose to go further by making of this department an inspection bureau, so that existing tenement houses may at all times be under their surveillance. To the proposed commission is to be given power to enforce the laws which they suggest. Of necessity the administration of such a department as recommended by the Commission must be municipal, yet it would be of great importance to the State at large. The evils resulting from poor tenements, through lack of sufficient light, ill ventilation and bad sanitation,

affect not only the city in which they are located but all parts of the Commonwealth. Comfortable home life is the inspiration of good citizenship, and therefore in this the State at large is interested. The sociologic side of the question,—the relation of comfortable and sanitary housing to good morals,—is so apparent and so well understood that it hardly calls for discussion. I believe that the enactment and proper enforcement of the laws proposed will do more to eradicate vice and benefit the morals of communities, where overcrowded and unhealthy conditions prevail, than any other police law which can be framed.

This report is commended to your careful consideration with the hope and in the belief that it will receive at your hands the attention which its importance warrants. If the proposed recommendations, after careful scrutiny, shall meet with your approval, they should be speedily enacted into law. [See note 21.]

B. B. ODELL, JR."

February 25. To the Assembly:

Veto of a bill entitled "An act to amend Chapter three hundred and twelve of the Laws of eighteen hundred and ninety-six, entitled 'An act to regulate the profession of Public Accountants', relating to exemption from examinations."

"This proposed act seeks to nullify, so far as certain accountants are concerned, section three of Chapter three hundred and twelve of the Laws of eighteen hundred and ninety-six, and to exempt them from the Regents' examinations. Approval of this bill would place those who have practiced as public accountants since the passage of the original act at a disadvantage; would operate unfairly and would be an evasion for the benefit of those who may, perhaps, not possess the necessary qualifications for the profession which they seek to enter. As the original law

was intended for the public benefit, it should not be evaded in any particular by special legislation.

For the reasons above set forth, Executive approval is withheld."

The bill was not passed over the veto.

February 28. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the election law. The bill was passed, and became chap. 95 on the 13th of March.

February 28. To the Assembly:

Veto of a bill entitled "An act to confer jurisdiction upon the Court of Claims to hear, audit and determine the alleged claim of Michael O'Keefe against the State of New York for damages alleged to have been sustained while in the employ of the State."

"This bill provides for the submission to the Court of Claims of the claim of Michael O'Keefe for damages alleged to have been sustained by him while in the employ of the State as a stone cutter about July 1, 1879. This claim is now barred by the statute of limitations, and one purpose of this act is to waive this objection. While there may be instances in which justice would permit this limitation to be waived, I do not think this is such a case. Where so much time has elapsed, as in this instance, the rights of the State cannot be effectively protected and the necessary witnesses procured in its behalf.

This claim has been presented to the Legislature at different times heretofore and in each instance the bill has failed to become a law. There is nothing presented now which leads me to any different conclusion.

For the reasons above stated I do not think this bill should receive Executive approval."

The bill was not passed over the veto.

March 11. To the Senate:

Veto of a bill entitled "An act to amend chapter 166 of the laws of 1895 entitled 'An act to incorporate the trustees of scenic and historic places and objects and to provide for the care of certain property of the State,' as amended by chapter 302 of the laws of 1898." [43]

"This bill in addition to changing the name of the society extends its powers to hold property all over the United States and provides that the trustees and members of the said corporation may receive compensation for services. It also authorizes and empowers the Regents of the University to co-operate with the corporation by the designation of suitable lectures and the lending of necessary books and apparatus and *otherwise* aiding the necessary objects of the corporation. In my judgment the powers sought to be conferred by the proposed bill are too broad and the clause providing that the Regents shall co-operate with the society would undoubtedly lead in time to a demand for an appropriation to carry out this provision of the act. I understand that this society has already applied for and received on one or two occasions small appropriations for purposes in the line of the charter which it now holds. It does not seem to me that it is a legitimate function of the State to go any further than it has already gone in granting the present charter, nor should the State assume even remotely any liability on account of this society. The bill is therefore returned without Executive approval."

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[43] This bill was not passed over the veto, but another bill relating to this corporation, changing its name to the American Scenic and Historic Preservation Society, and defining and enlarging its powers, was passed, and became a law, chap. 385, on the 17th of April.

March 11. To the Senate:

Veto of a bill entitled "An act to change the name of the Niagara Fire Insurance Company of Erie County to the Prudential Fire Insurance Company of Buffalo."

"It is claimed that as the general law does not apply to this corporation it can not avail itself of the provisions of the code for a change of name as can companies which are incorporated under the general insurance act. In other words, while it has voluntarily placed itself outside of the privileges and restrictions of the insurance act and is not under the close supervision and control of the Superintendent of Insurance, as are those companies incorporated under it, it asks that a special law may be enacted for it, which those corporations could not obtain. If there is any merit in the contention of this corporation that the provisions of section 2411 do not apply to it by reason of the fact that it is not under the insurance law, that should be remedied by an act bringing these corporations under the general law rather than by extending to them further privileges by special acts.

For the reason that I think the purpose sought to be accomplished by the proposed act should be obtained by other means, I have decided to withhold from this bill Executive approval."

The bill was not passed over the veto.

March 11. To the Assembly:

Veto of a bill entitled "An act to provide for compensation for services rendered, and for the reimbursement of moneys expended by the present sheriff of Nassau county for and in discharge of his official duties after the expiration of his present term of office."

"The bill seeks to authorize the payment by the board of supervisors of the county of Nassau to the sheriff of said county for services of said sheriff in finishing up his

duties after the expiration of his present term, together with the necessary disbursements paid or incurred by him in the performance of said duties. It also provides that his reasonable expenses necessarily incurred or to be incurred in the prosecution or defense of any action or proceeding instituted by or against him prior to the expiration of his official term may be paid to him. As to the provision for compensation to the sheriff for services to be rendered by him after the expiration of his term of office, it is clearly within the prohibition of article III, section 28 of the Constitution, which provides that ' * * * boards of supervisors shall not grant any extra compensation to any public officer, servant, agent or contractor;' and article VIII, section 10 of the Constitution, which provides that ' no county * * * shall hereafter give any money in aid of any individual * * * ; nor shall any such county * * * be allowed to incur any indebtedness except for county * * * purposes * * * .' As to the provision for expense in the prosecution or defense of actions against him, it is already provided for by section 230 of the County Law.

For the reasons above stated I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 11. To the Assembly:

Veto of a bill entitled "An act to authorize and empower the town boards in Nassau county to preserve their records by causing the same to be recopied."

" The proposed act provides that the town board of any town in Nassau county may authorize the clerk of said respective town to cause any of the town records to be recopied at the town expense whenever they are deemed unfit for reasonable public use. Under this proposed legislation an expense to the taxpayers of the town might

be incurred limited only by the judgment of the town auditors as to what is a reasonable charge for the services rendered. The experience of various counties under acts providing for the recopying of their records shows beyond question that the expense is out of all proportion to the benefits received and largely in excess of the amount originally contemplated. In view of the other limitations on the powers of town boards in incurring indebtedness on behalf of the town, it does not seem wise to place in their hands the unlimited power sought in this bill without any action of the taxpayers.

For the reason above referred to I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill incorporating the city of Oneida. See second certificate March 28.

March 15. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *March* 15, 1901.

"I herewith transmit the report of the State Engineer and Surveyor, who acting under authority of chapter 411 of the Laws of 1900, has surveyed the different routes provided for in that Act, with a statement in detail of the result of his investigations and the estimated cost of the different routes proposed. In addition to the report herewith submitted, the State Engineer also submits an estimate of the cost of completing the canal under the law of 1895, commonly known as the Nine Million Dollar Act.

This report together with the supplemental statement of the State Engineer places before you five different methods of improving the canal, the first four of which

provide for a barge canal, with the necessary locks, for two barges twenty-five feet wide, ten feet draft and one hundred and fifty feet long, while the supplemental report provides for a canal suitable for boats ninety-eight feet long, seventeen and a half feet wide and seven or seven and a half feet draft, the capacity of the barges being 1,000 tons and of the latter 315 and 340 tons.

The first route proposed is by way of the Mohawk and Seneca Rivers, the distance from Troy to Buffalo being 342.56 miles, including improvements to the Oswego Canal from Three River Point to Oswego, nine miles, and the Champlain Canal from Troy to Whitehall, at a total cost of $78,496,446, from which estimate the value of abandoned lands is to be deducted, amounting on the Erie Canal to $1,941,380, and upon the Champlain Canal $22,620, which leaves the net cost of $76,532,446.

The second route proposed is by way of the Mohawk and Oswego Rivers, via Olcott to Buffalo, using Lake Ontario, a total distance of 338.66 miles, with improvements to the Erie Canal amounting to $46,765,755, the Oswego Canal amounting to $5,170,129, and the Champlain Canal at a cost of $4,750,608, making the total gross cost $56,686,492, from which is to be deducted the estimated value of abandoned lands on the Erie Canal, $1,953,202, the Oswego Canal, $2,391 and on the Champlain Canal $22,620, leaving the net cost $54,708,279.

The third route is by way of the Mohawk and Oswego Rivers and Lake Ontario, via Lewiston to Buffalo, a total distance of 347.57 miles, at a total cost of $48,984,220 for the Erie Canal, $5,170.129 for the Oswego Canal and $4,750,608 for the Champlain Canal, making a total cost of $58,904,957, from which should be deducted the value of abandoned lands as above in the case of the Oswego-Mohawk Canal, leaving the net total cost $56,926,744.

The fourth plan is by way of the present canal, modified, from Troy to Buffalo, 347.66 miles, at a cost of $81,-

578,854, for improving the Oswego Canal $1,481,012, and the Champlain Canal $5,787,929, making a total cost of $88,847,795, from which is to be deducted the estimated value of abandoned lands on the Erie Canal $1,530,225, leaving the net cost $87,317,570. To this total should be added the improvement of the Hudson River from Troy to Watervliet, $737,683, and improving Black Rock Harbor, $538,051, a total of $1,275,734. These latter items are to be added to each of the above estimates if the United States Government does not do this work.

The improvement of the canals along the Nine Million Dollar plan, under the Act of 1895, would amount to $19,797,828, divided as follows: The Eastern Division, $5,825,386; the Middle Division, $2,086,987; the Western Division, $7,060,950; the Champlain Canal, $2,689,117, and the Oswego Canal, $2,135,388. To this is to be added the value of property taken or injured by this improvement.

The question of improving the canal system or abandoning it altogether is thus presented for your consideration, and it may be well in this connection to study the subject from an economical as well as from a business standpoint. Whether the canals have outlived their usefulness; whether if abandoned increased railroad charges would result, are questions of grave import and should be carefully weighed and considered so that a conclusion may be reached and the course the State shall pursue with reference to the canal system established.

First, let us understand the cost and what it means to the taxpayers of the State if any of the proposed plans are chosen. It may be assumed that money can be borrowed at three per cent. interest. As the bonds are limited by the Constitution to eighteen years,[e] providing for the reduction of such bond issue at the rate of one-eighteenth each year, it would mean that the total cost by the first

[e] Const. 1894, art 7, § 4. See amendment of 1905.

plan would be, including interest, $97,197,206.42, or a cost per year of $5,399,789.

The cost of the second plan, including interest, would be $69,479,514, a total cost per year of $3,859,973.

The total cost by the third plan, including interest, would be $72,296,964 or $4,016,498 per year.

By the fourth plan the total cost would be, including interest, $110,893,313, or $6,160,739 per annum.

By the fifth plan, the cost would be, including interest, $25,143,241, or $1,396,846 per year.

The total cost per $1,000 estimated valuation, based on the present year's valuation of $5,671,363,345, would be $17.14 for the first plan, $12.25 for the second plan, $12.74 for the third plan, $19.55 for the fourth plan and $4.43 by the fifth plan. In other words this would be the total mortgage against each $1,000 of valuation of property in the State of New York. It is claimed, and the figures no doubt bear out the statement, that the canal, counting merely the costs resultant from expenditures for construction and improvements, disregarding the interest charges, has more than paid for itself. If however we add to this cost the interest upon the investment, it is doubtful whether such a conclusion can be drawn.

The average cost of transportation of cereals by railway has been 2.5 mills per ton mile, from Buffalo to New York. Under the present Erie Canal the cost per ton mile, according to the Greene report, is 1.75 mills, and under the Seymour plan, the act of 1895, if the canal were completed according to those plans, the cost would be 1.16 mills, while under the proposed barge canal it would be .88 mills. This of course represents only the carrying charges, and has nothing to do with the cost of the investment. In making a comparison with the railroad charges it should be added. Taking the most favorable basis and estimating that the tonnage would exceed 10,000,000 tons, there should be added, if the fourth

plan should be adopted, the interest on the ultimate cost, which would be $110,000,000. This, at three per cent. would be $3,300,000. Adding this to the mere cost of transportation of .88 mills per ton mile, the result would be .886 mills. Completing the canal under the plan of 1895, the new capital would be $25,143,241, which at three per cent. interest, and estimating the tonnage at 10,000,000 would be 1.161 mills per ton mile. The only difference in the cost per ton mile between the $25,000,000 plan and the barge canal would be .275 per ton mile. We thus see that from a competitive point of view the canal can under either of these plans carry freight at a lower rate than the railroads, and the rate by both plans being so much below the lowest rate than the railroads, per ton mile, it would seem that the advantages of the large canal were not great enough to warrant the increased expenditure.

Directing attention again to the report of the State Engineer we find that the economical point at which boats can be moved is three miles per hour in regular canal prism, three and a half miles in rivers canalized and 4.4 miles in open water. Mr. Sweet, to whom this question was referred, believes that a higher speed than three miles per hour in the regular canal prism is economically undesirable. He estimates that under the completion of the Nine Million Dollar plan the possible speed of towing six barges of three hundred tons each would be two miles per hour, and that the time between Buffalo and the Hudson River would be seven days, while the time by the barge canal would be five and a half days, a difference of less than two days between the two different routes.

While it is true that the report shows the capacity of the barge canal would be 10,000,000 tons and the small canal 8,000,000 tons, both of these figures are very much in excess of the present needed carrying capacity of the canals and which even when the canal traffic was greater than now was more than adequate to meet all demands.

The cheaper routes by way of Lake Ontario are objectionable because of the dangers incident to traffic on that Lake, so that it is probable that but two plans can be examined and that but one of three courses is left for consideration. First, shall the canals be abandoned? Second, shall they be enlarged so as to permit the passage of 1,000 ton barges? Third, shall the improvement begun under the act of 1895 be continued along the line of the route of both the Erie Canal and its feeders?

It may be well to consider here what advantage the canal offers in return for the money expended. Is it great enough to warrant the expenditure of this money, and is the commerce of the city of New York so much endangered that steps should be taken by the State at large to protect its present business and bring back the commerce which it is claimed has been lost?

It is assumed of course that the canal provides the best means of carrying certain kinds of freight to the seaboard and that it offers advantages greater than those offered by the railroads, and that its maintenance will prevent unjust discrimination against the Metropolis. In the Greene report it is contended that the development of the canals will have a tendency to bring into the State of New York the iron industry, and it is pointed out that already a large steel mill is being erected at Buffalo, and that it should have easy means of reaching the coast for export. It is not assumed, notwithstanding that to-day it offers lower rates than the railroads, that it can in any event win from the railroads the traffic which they enjoy, but it is true that the canals should and can be used to protect our merchants and shippers against unfair discrimination. This it has accomplished in the past, and for the future protection the canals should be continued under State supervision.

In considering the decline of the commerce of the port of New York, it is well to understand that the harbor

facilities of Philadelphia, Baltimore, Newport News, Boston and Montreal have been greatly improved, and it is not to be expected that, nothwithstanding anything that might be done to bring trade to our own port, there should be no increase in the business of these ports. Yet the fact is apparent that of the 59,000,000 bushels of wheat exported from these six ports in 1899, 25,000,000 bushels came to the port of New York; in 1898 of the 98,000,000 bushels, 49,000,000 bushels came to New York; in 1897 of the 66,000,000 bushels, 25,000,000 bushels came to New York; in 1896, 18,000,000 bushels out of a total of 46,000,000 bushels came to New York; and in 1895, 20,000,000 bushels out of a total of 35,000,000 bushels came here, showing an annual decrease in the percentage at the port of New York. This is also true of the shipments of flour. While the number of barrels shipped from these outports in 1894 and in 1899 was practically the same, the shipments from the port of New York have fallen off nearly two million barrels.

It is doubtful whether the inadequate canal facilities are entirely responsible for this condition of affairs. The terminal charges and dock facilities are not as desirable in New York as they are at other ports, and in considering the question it is well to give due weight to these factors in the case. It is also well to understand that the numerous improvements suggested under the act of 1900 contemplate the abandonment of the old method of propelling the boats. New transportation facilities will have to grow and a considerable amount of money be invested before the canal upon any of the plans outlined under this act can be made effective. It is therefore possible that some years may elapse before New York would receive the full benefit of the proposed improvements.

I am therefore brought to this conclusion: That in the proposed improvement for 1,000 ton barges the advantages to be derived are not commensurate with the

expense involved, and that the purposes for which the canals should be maintained are more for protection against unfair discrimination than they are for actual use. If this be true, it would seem that the smallest expenditure would be ample and that the enlarged barge canal recommended should not be adopted. It might be possible, by lengthening the locks and by changes of a similar character, that larger boats might be used and more expeditious locking secured, as recommended under the modified plan of 1895. If that course shall be adopted, it is understood that the estimate of $19,000,000 will not be sufficient, and perhaps several million dollars should be added to the estimate.

It is your province to thoroughly consider the various plans proposed. It seems to me however that there can be no reasonable argument advanced for the large canal as a competitor with the Canadian canals, because under the most favorable conditions we would still be as far from Liverpool, and the distance from the port of New York would still be several hundred miles farther than from Montreal. We can discard that part of the proposition therefore and consider the canal question as one more local than international. The question however is one that should be submitted to the people, and where so large a proportion of the citizens of the State desire affirmative action there would seem to be no excuse why the Legislature should delay submitting the matter for their approval or disapproval.

The figures which have been submitted show that the cost as between the more expensive and the least expensive projects for transportation is a trifle, and the time consumed in transportation a difference of less than two days between the two; that the question of competition with the Canadian canals would still be unsolved, as even the large project would give a canal smaller than the Canadian canal; that our terminal charges would still be as large as

at present, and that other legislation will be necessary in order to remove from the port of New York the disadvantages under which it labors in order to restore to it some of its lost commerce.

I therefore recommend that the question of improving the canals along the line of the act of 1895 be submitted to the people at the coming election, in the belief that this plan will meet with greater approval, that the expenditure can be more easily met, and that it will serve all the purposes for which the canal was originally designed.[44]

B. B. ODELL, JR."

March 15. To the Senate:

Veto of a bill entitled "An act to release to Campbell Valentine Schuyler all the right, title and interest of the people of the State of New York in and to certain real estate in the borough of Manhattan in the city, county and state of New York."

"The purpose of this act is fully set forth in its title. The proceeding for acquiring the interest of the people of the State in land acquired by escheat, forfeiture or otherwise, is now covered by article 4 of the Public Lands Law, and that act fully provides for protecting both the rights of the State and the equities of the parties affected. I know of no reason why any exception should be made in the present instance.

The bill is therefore returned without Executive approval."

The bill was not passed over the veto.

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[44] An act was passed in 1903, chap. 147, providing for the construction of barge canals in place of the Erie, Champlain and Oswego canals, using and enlarging existing canals or constructing new canals on different routes as might be deemed most advisable. The act authorized the expenditure of $101,000,000 for the new canals. The act was submitted to the people at the November election in 1903, and was approved by a large vote.

March 15. To the Senate:

Veto of a bill entitled "An act to change the name of the Orphan Asylum of the Society of Reformed Churches of Brooklyn, New York."

"This bill seeks to change the name of a charitable corporation by a special act, whereas there is abundant authority in section 2411 of the Code of Civil Procedure for obtaining the relief sought for in the proposed bill. I have heretofore expressed my disapproval of similar legislation on this ground and believe that the bill should not receive Executive approval."

The bill was not passed over the veto.

March 15. To the Senate:

Veto of a bill entitled "An act to amend section 2528 of the code of civil procedure, relative to appearance in any proceeding in the surrogate's court."

"The amendment to this section provides that a general voluntary appearance in writing of a person named or designated in a petition, or who is entitled to be made a party to the proceeding is equivalent to the issue and personal service of a citation upon him. In all other proceedings in the surrogate's court where a party does not appear in person or by his counsel, his appearance must not only be in writing but must be duly acknowledged or approved, and this requirement is eminently a proper one. If this is not required, the interest of persons in large estates would depend solely upon papers purporting to be signed by them, without any further proof of the signature or any acknowledgment of the party by whom it purports to be signed, taken by a notary or other proper officer.

I do not believe that the interests of a party should be jeopardized in this manner, and therefore return the bill without Executive approval."

The bill was not passed over the veto.

March 15. To the Senate:

Veto of a bill entitled "An act to amend section 2562 of the code of civil procedure relative to additional allowance in settling accounts in surrogate's court."

"This bill provides that a surrogate may allow to a special guardian for an infant on a judicial settlement or intermediate settlement a sum not exceeding $10 a day for each day occupied in the trial and necessarily occupied in examining the account and preparing his report thereon to the surrogate, which shall be payable out of the corpus of the fund of the interest of the infant, as he may direct. The principal objection to this bill is that it provides that the allowances may be paid out of the interest of the infant in the fund. This should not be permitted as the infant cannot be heard in his own behalf, except through the counsel to whom the allowance is to be paid, and he is practically without protection except through the discretion of the surrogate, and would be unable to protect himself against an excessive and exorbitant allowance if such should be asked for and granted.

For this reason I think this bill should not receive Executive approval."

The bill was not passed over the veto.

March 15. To the Assembly:

Veto of a bill entitled "An act for the relief of the First Universalist Society of Mount Vernon, New York, a religious corporation."

"This bill seeks to relieve the real estate of the Society in question from any and all assessment on public improvements heretofore levied and assessed thereon and now unpaid. The effect of thus relieving from assessment the property of this Society would be that other real estate would have to bear that much more of the

burden of taxation and the real estate of the Society would receive the benefits accruing from the public improvements adjoining it without contributing in any degree to the cost thereof. While there has been on the statute books for a number of years a law relieving the real estate of religious corporations used solely for church purposes from general taxation, yet it has always been considered sound public policy that all persons and corporations whether religious or secular should bear their just share of the cost of local improvements from which they receive a proportionate benefit. A great number of bills of this nature are introduced every year and as this is the first one that has reached me during the present session, I desire to express my judgment that legislation of the character of the proposed act should not be enacted into law.

For the reasons above stated I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 18. To the Assembly:

Veto of a bill entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the claim of William Dinehart against the State of New York for injuries alleged to have been sustained on the tow path of the Erie canal near the village of Canastota in the month of November 1897, and to render judgment therefor."

"By Chapter 36 Laws of 1897 the Court of Claims was given jurisdiction to hear claims arising within two years previous to the filing thereof.

Section 383 of the Code of Civil Procedure provides among other things: 'That an action to recover damages for personal injuries resulting from negligence must be commenced within three years.'

Article VII section 6 of the Constitution provides: 'Neither the Legislature, canal board, nor any person or

persons acting in behalf of the State shall audit or allow or pay any claim which as between citizens of the State would be barred by a lapse of time.'

If the claimant in this case had any right of recovery he should have filed his claim in the Court of Claims within two years from the happening of the negligence complained of. By the terms of the Code above quoted, an action for injuries must be commenced within three years. The claimant not having done so, he is barred by the lapse of time and is within the inhibition of the constitutional provision above cited.

In view of the reasons above set forth, I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 20. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the tax law relative to taxable transfers of property. The bill was passed and became Chap. 173 on the 22d of March.

March 22. To the Assembly:

Veto of a bill entitled "An act to change the corporate name of and to legalize and confirm conveyances of land to and from 'The Hamburg Cemetery Association.'"

"The first clause of this act proposes to change the name of the Hamburg Cemetery Association to 'The Prospect Lawn Cemetery Association.'

The second clause proposes to legalize all conveyances of lands to the said Cemetery Association by either of said names. Bills of a similar nature proposing to change the names of other corporations have been in several instances vetoed by the Executive on the ground that ample provision exists in the code of civil procedure, sections 2411-2417, for this purpose.

For the reason that I regard this as unnecessary legislation in view of the provision of the code, I am impelled to withhold Executive approval from the bill."

The bill was not passed over the veto.

March 25. To the Senate:

Veto of a bill entitled "An act to provide for the enrollment of political parties in the several towns of the county of Monroe."

"The principal object of the primary law is to prevent the participation in the primaries of those who are affiliated with other political parties. The general law covering primaries and enrollment of voters is now made applicable and can be used in any city or village of 5,000 or more inhabitants, and in my judgment affords sufficient regulation for the conduct of primary elections therein. It has long been understood that in towns and villages of less than 5,000 inhabitants, where personal registration is not required,[f] the relations existing between the inhabitants and their knowledge of each other's political affiliations have usually been sufficient to protect every party against corrupt practices. The provisions of the present bill might easily lead to the very results which they seek to prevent, besides establishing what might become a dangerous precedent. It permits the placing on the enrollment books by the inspectors of election at the time of registration of the name of any voter whose political affiliations are known to them. It also provides that they may do so on the oath of any other registered elector who claims to know the political affiliations of the voter. The provisions would enable voters to be enrolled without their knowledge and without their personal appearance before the enrolling officers, whereas personal appearance has in all other cases been deemed essential to prevent corrupt and false enrollments; yet I do not think it is desirable in rural

[f] Const. 1894, art. 2, § 4.

communities to which these provisions would apply, to require personal appearance and enrollment as a prerequisite to participation in town primaries. When personal registration was required in all towns it was found that great hardship resulted therefrom, owing for one reason to the distance so many voters resided from the places of registration. It seems to me unwise to place on the statute books a law applicable to the county of Monroe only, containing provisions so liable to abuse as those I have referred to. For these reasons I think the bill should not receive Executive approval."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to extend the time of the Little Falls, Van Hornesville and Otsego Lake narrow gauge railroad company to begin the construction of its road and expend thereon ten per cent. of the amount of its capital and to finish and put the same in operation."

"From the information furnished me it would appear that the certificate of incorporation of this company was filed about twelve years ago, and that beyond making a survey of the proposed route nothing has ever been accomplished in the way of constructing a railroad under the authority given by the act in question; nor is there presented any evidence of an intention on the part of the holders of the present charter to proceed with the construction of the road should the extension asked for in this bill be granted them. It simply exists as a paper corporation possessing certain rights which might be used to prevent some other corporation from availing itself of the privileges which this corporation has not seen fit to exercise. An extension of its corporate existence would prevent any other railroad being built on its route during that period unless its rights be first purchased and would simply be an obstruction to the future development of the region through which it lies.

For the reasons above stated I do not think this bill should receive Executive approval."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act for the compensation of the stenographer of the county court and surrogate court in the county of Richmond."

"This act seeks to raise the salary of the stenographer of the county court and surrogate court of the county of Richmond from $1,700 a year to $2,500 a year. One of the reasons given for the increase asked is that the stenographers of some of the other courts in the county receive a greater salary than the present stenographer of the county court. It is noticeable that the invariable rule for the equalization of salaries in the Greater New York is to raise the lower salary to the level of the higher and never to reduce them. This tendency is one that does not commend itself to the Executive. There is another reason, however, why this bill should not be approved. The charter of Greater New York already provides ample means for increasing the salary in question, if the local authorities deem it desirable, and the determination of the proper compensation for the official in question should be left with them, as contemplated by the charter.

For these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 25. To the Assembly:

Veto of a bill entitled "An act to confer jurisdiction on the court of claims to hear, audit and determine the alleged claim of James Hamill against the state for personal injuries received by him while operating certain machinery in Clinton prison."

"From the report of the Superintendent of State prisons it appears that the accident referred to in this bill occurred

in Clinton prison May 24, 1894. It will thus be seen that it has now been nearly seven years since this accident happened and during all that time the board of claims (now the court of claims) has been in existence, and it does not appear that any steps were taken for the enforcement of the aforesaid claim. The claimant having rested all these years, it would be manifestly unfair and unjust to the State to enact the proposed legislation, as it might deprive the State of any constitutional or statutory defence, and owing to the delay the State might be unable to secure evidence which would have been available had the claimant filed his claim within the statutory time. Actions similar to the one for which this legislation is sought are required to be commenced against private persons within three years and I know of no good reason why the State should not be entitled to the same defences as individuals against the prosecution of claims of such long standing.

For the reasons above stated I do not think the bill should receive Executive approval."

The bill was not passed over the veto. [See the veto of the Dinehart bill, March 18.]

March 25. To the Assembly:

Veto of a bill entitled "An act in relation to land condemned for public improvements."

" The purpose of this bill is to permit the owner of land condemned for street improvement purposes for upwards of twenty years, but which condemnation proceedings were never completed to the actual taking of the land and the payment therefor, to obtain title to such condemned land abutting his premises by presenting a petition to the municipal corporation setting forth the facts and in turn releasing said corporation from the payment of the award in the condemnation proceedings.

The objection to this bill is that if the conditions exist as set forth in the proposed bill, the relief sought might be obtained by an action in court and the municipal corporation either compelled to complete the condemnation proceedings and pay the award or to restore to the abutting owner his original title. As the only purpose of the bill would seem to be to provide another and different means from that already existing to accomplish this result, it does not seem to me that it is necessary legislation, and for that reason should not receive Executive approval."

The bill was not passed over the veto.

March 26. To the Senate:

Veto of a bill entitled "An act to confer additional powers on the Washington Hook and Ladder Company No. 1 of Lawrence and Cedarhurst, Nassau County, and to change the name of such corporation."

"The object sought by this bill is to change the name of the Hook and Ladder Company and to confer on it the powers of fire, hose, protective, and hook and ladder corporations incorporated under the membership corporations law.

The same objections exist to this bill as to a number of others seeking to change the names of corporations which, heretofore have been disapproved by the Executive. The power to change the name of the corporation already exists under sections 2411-2417 of the code of civil procedure and provide ample means for the relief sought. If the corporation adopt this method of changing its name it can then reincorporate under section 6 of the membership corporations law for the purposes set forth in the proposed act.

For the reason that there is ample provision of law now existing to accomplish what is herein sought, I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 26. To the Assembly:

Veto of a bill entitled "An act to enable Mervyn MacKenzie after due examination to be admitted to practice as attorney and counsellor at law in the Supreme Court of the State of New York."

"Certain regulations are now in force preliminary to the admission to the bar of persons desiring to practice as attorneys in the courts of this state. These have been established by the board of examiners, after due consideration, under the approval of the Court of Appeals of this State. Citizens of this State desiring to obtain admission to the bar are required to conform to them. This bill proposes to waive in favor of a person not a citizen of the United States certain of these requirements and to permit him to practice without complying with the regulations which are imposed upon our own citizens. This is a discrimination which I do not believe is justifiable nor one which should be permitted and for these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 26. To the Assembly:

Veto of a bill entitled "An act to amend chapter 385 of the laws of 1862, entitled 'An act to amend and consolidate the several acts in relation to the city of Schenectady' in relation to assessments in said city."

"The principal objection to the proposed act (which has not been accepted by the city), is that it provides entirely new and in my judgment erroneous methods of equalizing the valuation of real estate in the city of Schenectady. It provides that the board of supervisors shall, for the purpose of equalization, consider each ward of said city separately, in the same manner as they now consider the towns in Schenectady county. This is a radical departure

from the method of equalization now existing in this State and one which does not commend itself to sound public policy. It would result in creating feeling between the various wards on the subject of their equalization and lead to internal controversy and contention in the city on this subject. The interests of the whole city are so involved in the interests of each ward that it would be unfair and improper to treat them as separate towns are treated. I do not believe it is a policy that should be adopted in this State, and have decided to withhold Executive approval from this bill."

The bill was not passed over the veto.

March 26. To the Assembly:

Veto of a bill entitled "An act to confer jurisdiction on the comptroller of the State to hear and determine the application of Charles C. Cozine for cancellation of tax lands for great lot number 3, patent 7, Bergen's purchase, Hamilton county, for unpaid taxes." [45]

"In this case the lands in question are lands belonging to the State in the forest preserve, which were acquired at the 1881 and 1890 tax sales. Under a recent opinion of the Court of Appeals in Meigs v. Roberts, 162 N. Y. 571, the title of the State derived from said tax sales is a perfect title, by the statute of limitations, chapter 448, laws of 1885. This decision has been sustained by the Supreme Court of the United States in Saranac Land and Timber Company v. Roberts, 177 U. S. 318. It is therefore doubtful in view of the provision of article 7, section 7 of the Constitution whether the Legislature can lawfully pass an act which would put it in the power of the comptroller to cancel the title of these State lands. The equity in this case can not be very strong in view of the fact that the

[45] This bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 542, on the 25th of April.

former owner has rested so many years before making any effort to secure the cancellation of the tax sales in question.

For the reasons stated above, I have decided to withhold Executive approval from the bill."

March 27. To the Senate:

Veto of a bill entitled "An act to amend chapter six hundred and forty-four of the laws of nineteen hundred, entitled 'An act to authorize the city of New York to pay soldiers, sailors and marines of the United States army and navy during the last war with Spain, who were in the employ of the city or any of its departments at the time of their enlistment, the salary or per diem compensation to which they would have been entitled if they had remained in the employ of the city;' increasing the appropriation authorized to be made by the city of New York as provided therein."

"While the object of this bill may be commendable from some points of view, and the city has already raised a certain amount of money heretofore for the same purpose, I am unable to approve the bill, as I believe it is within the prohibition of section 10 of article 8 of the Constitution of the State of New York. It seems to me that the purpose of this bill comes directly within the prohibition above referred to. It is provided by the Constitution that 'No county, city, town or village shall hereafter give any money or property or loan its money or credit to or in aid of any individual, association or corporation * * *; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes." This provision of the Constitution was passed upon by the Court of Appeals in the case of Bush v. Board of Supervisors, 159 N. Y. 212, and there discussed at considerable length. The taxing power of the legislature and the purposes for which a municipality may give

its money or credit is thoroughly considered in this opinion and the doctrine there laid down that the Legislature can not authorize taxation for the purpose of making gifts or paying gratuities to private individuals. Legislation of this character is characterized as the taking of public moneys not for public use but for private individuals and is condemned in numerous cases therein cited. However much we may sympathize with the desire to confer on those who enlisted in the Spanish War some pecuniary recompense, it is impossible for me to reconcile the proposed legislation with the constitutional provisions referred to above, and I do not feel that the bill should receive Executive approval."

The bill was not passed over the veto.

March 27. To the Assembly:

Veto of a bill entitled "An act to permit the qualification and examination of dental students engaged in the study of dentistry under private preceptorship on May 12, 1892, who failed to file the certificates required by chapter 528 of the laws of 1892, to do so under the same conditions as if such certificate has been filed."

"This bill is evidently meant to meet some particular case where the person in question had failed to comply with a statute that has been on the books for nine years. Why this long delay should exist without the applicant complying with its provisions is hardly apparent. If provisions of this kind in regard to filing such certificates are necessary, and the Legislature has decided that they are, it is not good policy to pass acts of this character waiving them in special instances. While general in form, this bill undoubtedly meant to confer special privileges on some one who has for some reason failed to comply with the existing requirements. These regulations should either be

lived up to, or repealed altogether; and therefore I do not think legislation of this character should receive Executive approval."

The bill was not passed over the veto.

March 27. To the Assembly:

Veto of a bill entitled "An act to amend chapter 565 of the laws of 1898, entitled 'An act for the release of William R. Peters of any claim of the people of the State of New York in and to certain lands within the State of New York,' extending the time to fulfill certain conditions imposed by said act."

"This bill proposes to extend for five years from the time of the passage of this act the time within which one William R. Peters may comply with the conditions imposed by a grant of letters patent heretofore made. It appears that in the year 1885 the commissioners of the land board granted to William T. Burns certain lands under water by resolution on certain terms and conditions therein stated. Apparently the terms and conditions had not been complied with during the period up to 1898, and in that year a further extension was granted to said Peters, the then owner, of three years, within which he might comply with the terms and conditions thereof. For some reason he has not availed himself of the extension granted him by said act, and he now seeks to obtain a further extension of five years to comply therewith. I do not believe that this should be granted. There seems to have been a failure to comply with the provisions of the grant for sixteen years already, and an enactment of this character would permit the grant to stand for 21 years without the conditions under which it was granted being complied with by the parties in whose favor it was made. If the grant is of any value the conditions should be complied with without further delay, and a further extension of five years without the State receiving any benefit therefrom should not be permitted.

For these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 28. To the Legislature: Certifying to the necessity of the immediate passage of Assembly bill, incorporating the city of Oneida. Second certificate. The bill was passed and became chap. 225 on the 28th of March.

April 2. To the Legislature: Certifying to the necessity of the immediate passage of Senate bill, amending the banking law relative to building and mutual loan corporations or associations and co-operative loan associations. The bill was passed and became chap. 328, on the 11th of April.

April 3. To the Legislature: Certifying to the necessity of the immediate passage of Senate bill, in relation to tenement houses in cities of the first class. The bill was passed and became chap. 334 on the 12th of April. [See special message February 25, and note 21.]

April 3. To the Legislature: Certifying to the necessity of the immediate passage of Senate bill amending the Greater New York charter. [See next certificate.]

April 4. To the Legislature: Certifying to the necessity of the immediate passage of Senate bill, amending the Greater New York charter. Second certificate. The bill was passed and became chap. 466 on the 22d of April. [See special message of January 21. and note 21.]

April 5. To the Senate:

Veto of a bill entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Peter J. Galvin for personal injuries growing out of a fall from a scaffold which occurred at the capitol in the city of Albany, N. Y. on or about the thirty-first day of July, 1891."

"Since the time when the alleged accident occurred it has been before the Legislature several times but has failed

of approval in each case either of the Legislature or of the Executive. It is one of those claims which is now clearly barred by the Constitution[g] and by the statutes. Even if this were not so, the disadvantage to which the State would be put in contesting the claim at this late day would render it unfair to the taxpayers of the State to permit its becoming a law.

For these reasons I do not think this bill should receive Executive approval."

The bill was not passed over the veto.

April 5. To the Assembly:

Veto of a bill entitled "An act to authorize the board of supervisors of the county of Niagara to reconsider, audit and pay the claim of Roswell Park against the said county."

"Boards of supervisors of the various counties are given power to audit the bills of various persons for claims against the several counties and to fix and determine the amount to be allowed such persons thereon. Their determination of the amount at which the claim shall be allowed is made final, and succeeding boards are not at liberty to re-hear and re-determine claims which have been passed upon by a preceding board. The reason of this is obvious. It provides for a final settlement of the county's obligations, and prevents a continual pressure on the part of interested individuals to secure compensation beyond the amount at which their claims have been audited by the local body empowered to pass thereon. In the bill under consideration, the claim of the person mentioned therein had been passed upon by one board of supervisors of the county of Niagara, and the purpose of the bill is to enable another board to reconsider that determination and if it so desires to pay the claim at an amount beyond the previous audit of the board to which it was first presented.

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[g] Const. 1894, art. 7, § 6.

It is entirely out of the province of the Legislature in my judgment to impose upon the board of supervisors of the county of Niagara, or any other county in the State, the burden of re-hearing a claim which has once been finally adjusted. While there may be individual cases where the audit of the board is inadequate, yet in the main the local authorities are competent judges of the reasonableness of the claims presented against the counties, and there is no reason why the settled policy of the State should be changed to meet the special instance of the person named in this bill.

For these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 11. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 10, 1901.

In a message transmitted to you in January your attention was directed to the steadily growing expense of the State printing, and the hope was expressed that something might be done prior to the adjournment of the Legislature to remedy the evils, now patent to everyone, which have resulted from the present form of contract.

I know of no subject that can be brought to your attention where the necessity for a remedy is more urgent. Under the law as it is to-day the Board charged with the duty of awarding the contract for printing is deprived of discretionary power in making the award, and by a system of unbalanced bidding which has resulted, the growth of this expense has been something phenomenal. For instance, the Red Books for 1902, which under the contract that expired in January last would have cost $2.50 each, will cost $6.00 per copy, an increase of $7,000 in this item alone. The Attorney General is having his briefs type-

written instead of having them printed, owing to the great increase in their cost.

The most of the agitation against any change in the method of letting the printing contract comes from rival bidders who are not engaged in the work of job printing, but who simply bid upon the State printing work in order to sub-let the contract to a responsible person at as large a figure as it is possible to secure. Under the last contracts the successful bidders were John A. McCarthy for the legislative printing and C. F. Williams for the department printing. Both of those contracts were sub-let. I believe that to this system is due the growth of the State printing as shown by the following figures:

For Legislative Printing:

1880	$46,516 34
1881	16,995 72
1882	36,434 17
1883	71,485 02
1884	53,793 65
1885	67,537 79
1886	41,667 60
1887	92,016 51
1888	133,590 20
1889	135,661 49
1890	140,158 88
1891	95,000 00
1892	104,792 23
1893	151,989 60
1894	205,302 26
1895	194,796 03
1896	302,585 81
1897	144,850 00
1898	382,438 30
1899	322,675 88
1900	394,872 61

In addition to this the department printing for years, 1896, 1897, 1898, 1899 and 1900 cost as follows:

1896	$42,585 94
1897	72,653 76
1898	73,487 63
1899	79,127 47
1900	73,134 81
A total for the five years of	$340,989 61

I understand that bills are before you at the present time relating to the State printing. If nothing else is done, the existing law should be amended, giving a greater discretionary power to the board charged with the duty of letting the contract, and such contract should be limited to one year, so that should any defects creep in as have been discovered in the present contract, they could be remedied at the next session of the Legislature. The present contract will expire in May of this year. It will be seen, therefore, that prompt action should be taken.

In this connection it would seem wise also to readjust the number of copies of departmental reports which are to be assigned to each department. This is particularly true with reference to the department of the State Board of Regents where the greatest leak apparently exists. I am confident that if proper legislation should be enacted at this session of the Legislature governing the letting of the next contract, the result would be a saving of at least $60,000 or $70,000 per year. There is certainly nothing in the way of service to the State that will commend itself more strongly to the taxpayers than a remedy in this direction. I commend the subject to you for your immediate and careful consideration, and trust that you will, by reference to the proper committees, take it up at once.[46]

B. B. ODELL, JR."

[46] See note 13 for abstract of revised printing law.

April 11. To the Assembly:

Veto of a bill entitled "An act relating to temporary and out-door relief for the poor of the county of Westchester."

"The general poor law, under which the county of Westchester is now operating, provides that the board of supervisors may determine whether they will adopt the county or the town system of caring for their poor. The county of Westchester has adopted what is known as the county system of caring for its poor. This bill provides that so far as the temporary and out-door relief of the poor is concerned they may adopt the town system, practically, while retaining the county system for the permanent poor relief. The proposed amendment is open to the objection that it provides a special act for the county of Westchester and might establish a precedent for an amendment to the general poor law by special acts covering various localities. General acts should not be amended in this manner. If it is desirable that the board of supervisors should have the power to adopt one system for temporary relief and another for permanent relief of the poor, that should be accomplished by an amendment to the general law and not by special acts applying to particular counties.

For these reasons I do not think this bill should receive Executive approval."

The bill was not passed over the veto.

April 15. To the Senate:

Veto of a bill entitled "An act to amend section two hundred and fifty-nine of the tax law."

"The particular object of this bill is to permit receivers of taxes in cities to take supplementary proceedings on judgments for personal taxes where the amount of the tax is over ten dollars and allowing said receiver the same costs and disbursements as for the collection of any other judgment by such proceeding. Inasmuch as the costs and

disbursements which might be allowed on a proceeding of this kind would amount to several times the minimum amount of tax mentioned and would permit the receiver of taxes to examine and re-examine persons against whom judgments for personal taxes for ten dollars and upward may have been obtained, it is, in my judgment, placing in the hands of that official, or his attorney, power to harass and persecute persons who might be delinquent for small amounts in personal taxes to an extent which should not be permitted. For the reason that I think the power conferred by this act might be abused, I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to grant and release to John Cass all the right, title and interest of the people of the State of New York, in and to certain real estate in the city of New York."

"Article 4 of the land law relating to escheat lands confers upon the commissioners of the land office ample power and authority to release lands, the title to which has escheated to the State, upon a petition being presented setting forth the facts presented in such article.

For this reason I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to release to Franciska Stierle (formerly Franciska Braun) all the right, title and interest of the people of the State of New York in and to certain real estate in the borough of the Bronx, in the county of New York, acquired by escheat or otherwise upon the death of Conrad Braun, deceased."

"Article 4 of the land law relating to escheat lands confers upon the commissioners of the land office ample power

and authority to release lands, the title to which has escheated to the State, upon a petition being presented setting forth the facts presented in such article.

For this reason I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act for the relief of the Town of Morehouse in the County of Hamilton."

"This proposed measure relates to a cancellation of taxes made December 17, 1900, against certain lands in Lawrence Patent, Hamilton county, for the years from 1866 to 1892, inclusive, which had been previously cancelled by the state comptroller and charged back to Hamilton county. They were omitted from the accounts of unpaid taxes of 1893, 1894 and 1896 on the assumption that they had been properly relevied by the Board of Supervisors of Hamilton county. The property in question subsequently came into the possession of the State in connection with the purchase of lands for the Adirondack Park. It is now sought by this act to authorize the Board of Supervisors of Hamilton county to relevy upon these lands taxes which were not properly placed upon the assessment rolls. Should the proposed measure become a law the result would be that the State, now the owner of the lands, would be obliged to pay the taxes, amounting to about $3,100, and would be put to the expense of an action to recover them from the grantors of the land the amount thus paid. As the mistake was made by the town or county officials through negligence it would not be right that anyone outside of those directly responsible for it should be held accountable. For this reason I return the bill without approval."

The bill was not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to authorize the town of Elbridge in the county of Onondaga to reimburse Byron Chatfield for town moneys lost by the failure of Rodger & Co. and to release said Chatfield from liability to said town for said money so lost."

"The purpose of this bill is set forth in its title. While it may be a hardship to Mr. Chatfield to bear the loss, yet his responsibility for it has been clearly established by a decision of the Court of Appeals, holding that public officers having the custody of public moneys are *ex virtute officii* insurers of the same and are responsible for the loss thereof, although incurred without their fault or negligence (Tillinghast v. Merrill, 151 N. Y. 135).[h] The liability of Mr. Chatfield to the town for the loss of this money being unquestioned, the attempt to transfer the loss from the official to the town and to raise the money to reimburse him by a tax on the owners of real and personal property therein would be in violation of article 8, section 10 of the State Constitution.

This being so, I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 18. To the Legislature: Certifying to the necessity of the immediate passage of Assembly bill amending the tax law relative to foreign and domestic corporations. The bill was passed and became chap. 558 on the 26th of April.

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[h] See also Mercer v. Floyd (1898), 24 Misc. 164, holding unconstitutional L. 1897, chap. 111, authorizing taxation to reimburse town collectors in Oneida county for money lost by the failure of a bank.

April 18. To the Assembly:

Veto of a bill entitled "An act to amend the highway law relating to plowing, digging and cropping highways."

"In some portions of the country districts poor persons having small houses along the highways have occasionally used a portion of them to raise a little corn or potatoes, generally in places where the highway was especially broad, and thus added to their limited means of support.

Under the present law it is within the power of the commissioners of highways to prevent this use of the highways if the privilege should be abused. It does not seem to me that there is any such general evidence of the necessity of the passage of this bill as would justify me in signing it and requiring these people to obtain the consent of the commissioners for this use of the highways and placing it under their supervision. In addition, the direct authorization of its use by the highway commissioners might place an additional liability upon the town if any damage should happen to result to any person from this use of the highways as authorized by the commissioners.

I think the law as it stands is sufficient and it is better both for the people interested and for the town as it is, and for these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 18. To the Assembly:

Veto of a bill entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' in relation to police pensions."

"Under the present law as to the pension police fund in the city of Buffalo, provision is made for pensioning po-

licemen who were injured or incapacitated in the service and who served various lengths of time. It provides that they are to receive certain amounts increasing according to the length of their previous service. The highest amount that any policeman can now receive who shall be retired by reason of injury or incapacity contracted while performing policeman's duty is $600 a year provided he has served twenty-five years or upwards. The amendment proposed by this law is to allow a member of the police force who has served thirty or more years upon his written application for retirement, a sum equal to half of his annual salary. The distinction made in this bill is that a person who retires after thirty years of service may be in perfect health and yet on his application the police commissioners are compelled to retire him on one-half his annual salary, while a person may have served twenty-five years and be so badly injured or so incapacitated by disease as to be entirely incapable of supporting himself, and yet he can only receive his $600 a year. It seems to me that those who are injured or incapacitated while performing policeman's duty should be preferred to those who retire from the service in good health. It should be borne in mind that the reason why a policeman who has served thirty or more years cannot now receive the benefit of the police pension fund is because he has not been incapacitated by such police service, so that he is still continuing to receive his salary as a policeman or can receive the benefit of the present police pension law should he become hereafter incapacitated. I think the present police pension laws of the city of Buffalo are broad enough to care for all those as to whom any substantial duty devolves, and I do not think this bill should receive Executive approval."

The bill was not passed over the veto.

April 18. To the Assembly:

Veto of a bill entitled "An act to authorize the village of Seneca Falls to issue bonds for the purpose of acquiring title to and constructing approaches for the Rumsey street bridge, and to pay the balance due on the Crane addition to Restvale cemetery."

"Full warrant of law already exists for the raising of the money and issuing of bonds referred to in this bill provided the village authorities adopt the method prescribed by law for submitting to the vote of the people the determination of the question whether they will appropriate the sum specified or not. This bill seeks to confer upon the village authorities power to issue the bonds in question without the vote of the people and I have already expressed my views on this subject to the effect that where the law provides for a vote of the tax payers, authority should not be conferred by an act of the Legislature.

For these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 19. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill dividing the State into Congressional districts. See second certificate April 22.

April 19. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. See second certificate April 22.

April 19. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the act incorporating the Church Insurance Association. The bill was passed and became Chap. 554 on the 25th of April.

April 19. To the Assembly:

Veto of a bill entitled "An act to amend the election law, relative to the consolidation of registration and enrollment books."

"An examination of this bill does not convince me that it is desirable. The election law has been carefully framed to provide proper safe-guards for carrying out the will of the voter and for securing proper registration and enrollment. Only such amendments should be made as will protect the right of suffrage and make more strict the provisions against illegal and fraudulent voting. There has been no such objection raised to the provisions of the present law relating to registration and enrollment as would warrant the amendment sought by this bill, and for the reasons above stated I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of the appropriation bill. The bill was passed, but apparently without using the Governor's certificate, and became a law, Chap. 644, on the 3d of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill relating to the salary of the Kings county district attorney's chief clerk. The bill was passed and became Chap. 556 on the 25th of April.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill relating to the rights of veterans. This bill was passed and became Chap. 533 on the 25th of April.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amend-

ing the Greater New York charter relative to the department of education. The bill was passed, and became Chap. 714 on the 10th of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the board of city record. The bill was passed and became Chapter 715 on the 10th of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the department of docks and ferries. The bill was passed, and became Chap. 713 on the 10th of Many.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the police department. The bill was passed and sent to the mayor of New York, but was not approved by him. The Legislature adjourned before the bill was returned, thus preventing further action thereon.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the department of docks and ferries. The bill was passed and became Chap. 724 on the 10th of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the department of docks and ferries. This bill was passed and sent to the mayor of New York but was not approved by him. The Legislature adjourned before the bill was returned, thus preventing further action thereon.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the penal code in relation to the sale or delivery of uncooked flesh foods on Sunday. The bill was passed, but

was vetoed during the thirty day period for reasons which are stated in the Governor's memorandum filed May 3.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the tax law in relation to the taxable transfers of property. The bill was passed and became Chap. 493 on the 23d of April.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. Second certificate. The bill was passed and became Chap. 645 on the 3d of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the licenses of teachers. The bill was passed and became Chap. 718 on the 10th of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Watervliet charter relative to board of fire commissioners, et cetera. The bill was passed and became Chap. 641 on the 2d of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill reappropriating certain unexpended balances of former appropriations. The bill was passed and became Chap. 687 on the 3d of May.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill dividing the State into congressional districts. Second certificate. The bill was passed and became Chap. 591 on the 27th of April. It divided the State into 37 districts.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the tenement house act relative to the construction of tenement houses. The bill was passed and became Chap. 555 on the 25th of April.

April 22. To the Senate:

Veto of a bill entitled "An act to amend section twenty-seven hundred and twenty-eight of the code of civil procedure relative to executors accounting proceedings in the Surrogate Court."

"As the law at present stands administrators and executors are alike privileged to account after six months provided certain necessary formalities as to advertising for creditors, etc., have been complied with. This provision of the code has been in existence now for several years and so far as anything which has been brought to the attention of the Executive, or as appears in any reported case is concerned, it has not worked harm to parties interested in the estates of decedents, and, in some cases, it has facilitated the speedy settlement therof.

Amendments to the civil and penal codes should only be made in cases where very strong reason therefor is shown and the settled law as set forth in these codes should be disturbed as seldom as possible.

For the reason that I am not convinced of the necessity for the passage of this bill, I have concluded to withhold Executive approval."

The bill was not passed over the veto.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of the supplemental supply bill. The bill was passed and became Chap. 642 on the 3d of May.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of the tax rate bill. The bill was passed and became Chap. 643 on the 3d of May.

April 23. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

February 5.

Memorandum filed with approved Assembly bill, chap. 6, amending the Bradish Johnson estate law.

"The original act of nineteen hundred which it is now proposed to amend has already brought about the sale and partition of the real property belonging to the estate of Bradish Johnson. But it is now found that the original act gave no authority to the guardians of certain infants to invest their shares of the proceeds of such sale in the corporation stock and bonds, and that unless said act is amended to permit this, the infants would be deprived of the benefit of sharing in the ownership of said real estate which it was intended by said original act that they should do. While the original act was special legislation and probably should not have become a law, yet inasmuch as it is a law I am constrained to sign this act for the reason that I do not wish to prevent the infants sharing equally with the other heirs, and thus be discriminated against as they would be should the bill not be approved."

February 19.

Memorandum filed with approved Assembly bill, No. 41, chap. 25, legalizing school bonds of the Warwick union free school district.

"The law governing the issuing of bonds of this character is explicit, and there seems to be no reason why any mistake should be made thereunder. The primary object of the law is to permit the voters of every locality to express themselves upon the question of the issuing of the bonds, to protect the taxpayers as to the rate of interest, and to secure for them the highest price. Its provisions are of general character and are sufficient to afford every

community full power in reference to the issuing of such bonds. In this case there seems to have been an error which has occurred through a failure to state on the ballot the object of the appropriation. Inasmuch however as the question involved is well understood by the taxpayers of the locality, and the irregularities are technical, although unfortunate, I am constrained to sign the bill, believing however that such measures should not be enacted into law except in very special instances, and that the Legislature should not constantly be called upon to correct various irregularities and failures to comply with the plain requirements of the law. While my better judgment is against such legislation, yet to relieve the taxpayers of the town from the expense of again passing upon this project which they have once already voted upon, and there being no protest from the locality affected, I have affixed my signature thereto."

February 19.

Memorandum filed with approved Assembly bill, chap. 24, legalizing East Aurora bonds.

"As I have stated in my memorandum approving Assembly bill number 41, introduced by Mr. Bedell, the general law provides fully and plainly as to the requirements to be followed in the issuing of bonds, and there is very little excuse for a failure to comply with them. The statute is designed to secure the fullest protection to the taxpayer and to the purchaser of such bonds. There would be no reason why acts of this kind should be passed at each session of the Legislature if the municipal and town authorities would exercise ordinary care and precaution in the steps taken preliminary to the issuing of the bonds. Inasmuch however as the question of issuing the bonds has already been submitted to the taxpayers and is well under-

stood by them, rather than impose the burden of a new proceeding, I have signed this bill in order that the technical defect may be cured. At the same time, I desire to reiterate my opinion that the necessity for this legislation should be avoided by the local authorities exercising greater care in observing the very plain requirements of the statute."

March 8.

Memorandum filed with approved Senate bill, chap. 70, legalizing Utica Central advanced school bonds; Senate bill, chap. 71, legalizing Utica Mary street school bonds, and Assembly bill, chap. 73, legalizing sale of Lacona bonds.

"I am again constrained to call attention to the extraordinary number of bills before the Legislature legalizing the proceedings taken to raise money by vote of the people, and to validate bonds issued in pursuance thereof. The statutory requirements are not so intricate that there should be any difficulty in the authorities who conduct such election complying with them, and the time of the Legislature should not be taken up in passing acts like these, to save the expense of a new election, and to correct omissions on the part of the municipal authorities which could have been avoided by more careful attention to the provisions of the statute. While it may not be desirable to impose the expense of a new special election upon the municipalities in all cases, yet the statute is so plain and direct, it is but right to expect that they should comply with it. If the defect occurs through neglect of the officers of the municipalities it should be corrected by a new proceeding under the statute, and continued applications to the Legislature to correct and legalize proceedings for this reason avoided."

March 26.

Memorandum filed with approved Senate bill, chap. 181, claims of Deltry, Draper and Borgersrud.

"This claim grows out of the change of an over-head bridge with high approaches to a new lift bridge, the approaches of which were very much lower. The claimants own property on either side of the approach to the bridge. The buildings had been constructed with reference to the highway as it existed prior to the change in the approach. Chapter 105, laws of 1897, which made an appropriation for the building of the new bridge, made no provision for taking the easements of property owners, and the Superintendent of Public Works reports that he finds no record of such easements having been obtained. The effect of the change of the approach was to leave the buildings of the claimants a considerable distance above the new grade of the street. Apparently this is a case which might properly be referred to the court of claims to determine the liability of the State, and if any exists the amount of damage done to the property of the claimants. As I understand they have previously made an attempt to go to the board of claims but were defeated through some technicality, so that as the merits of their claim have never been passed upon by the court, I have decided to approve the present bill."

April 12.

Memorandum filed with approved Senate bill, chap. 334, regulating the construction of tenement houses.

"On the hearing before me on this bill it was developed that some hardship would be occasioned by its immediate enactment into law, and also that certain amendatory provisions were proper and necessary. The president of the tenement house commission has transmitted to me a letter

recommending that certain supplemental legislation be enacted to correct these defects, which is attached to and is to be taken as a part of this memorandum. In the belief that the Legislature will take this matter up, and in thorough sympathy with the object and purposes of the tenement house commission I have concluded to approve the present bill, leaving to the wisdom of the Legislature the propriety and extent of supplemental legislation on this subject.'"[47]

MR. DEFOREST'S LETTER.

April 11, 1901.

Hon. B. B. ODELL, JR., Governor of the State of New York:

DEAR SIR.—I have carefully examined the provisions of a proposed amendatory bill intended to meet some of the objections raised at the hearing before you to some details of the Revised Code of Tenement House laws prepared by the Tenement House Commission.

There is, from the point of view of the Commission, no objection to them.

Permitting builders who have filed lawful plans by April 10th and who have made contracts but who cannot commence work until after May 1st, to build under the old law if they progress their work to the setting of the first tier of beams by August 1st, 1901, will increase to be sure the number of tenements of the old type; but to prevent the carrying out of *bona fide* building enterprises would work hardship.

The change in the law regulating access to water closets will relieve the better class of tenements from restrictions which in some cases might be onerous.

Wood made fireproof, as is quite possible under modern processes, should stand on a parity with other fire-proof materials.

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[47] Sections 4 and 75 of this act were amended by chap. 555, passed April 25.

These amendments, put in this form so as not to jeopardize other parts of the bill, will meet objections that have been earnestly pressed and will not impair the beneficent operation of the new law.

Respectfully yours,

ROBERT W. DEFOREST,

Chairman of the Tenement House Commission of the State of New York.

April 17.

Memorandum filed with approved Senate bill, chap. 402, for the audit of claims against city of Syracuse.

"After due consideration I have come to the conclusion that the offices created by this act are not city offices within the meaning of the Constitution.[h] The fact that the legislative body and the administration of the city of Syracuse have exceeded their powers and violated the provisions of their charter as to the limit of expenditures, and the further fact that under their charter the persons offending against these provisions are liable both to indictment and suit upon the part of the city or any of its tax payers, would seem to justifiy the action of the Legislature in designating some other body to consider and make the payments under this bill. While there is no legal claim for the payment of these debts thus illegally contracted, yet there does rest upon the city a moral obligation to liquidate them. Under ordinary circumstances it would seem wise to place in the hands of the auditing officer of the city power to audit and pay these claims. In view of the facts above cited, however, it is but an act of justice as between the city and its creditors that the claims should be passed upon by those who are neither morally nor legally responsible for them. While believing

[h] Const. 1894, art. 10, § 2.

in the general principle that interference in the appointment of local officers or with the financial management of a city or municipality is not the function of the State Legislature, still, however, for the reasons above given I have decided to approve this bill."[48]

April 17.

Memorandum filed with approved Assembly bill, chap. 403, making appropriation for the deaf mutes institution at Malone.

"I have given careful consideration to this bill and have decided to approve it. The fact that there are similar institutions, about a dozen in number, over which the State has no jurisdiction except through occasional visitations of the State Board, and that the control is entirely and solely within themselves as in private corporations, leads me to believe that the State should, if it is intended to contribute State moneys, exercise a proper responsibility as to their management. In all other cases where State aid is given there is competent jurisdiction through a board of managers appointed by the Governor with the approval and consent of the Senate. Another wise provision is that no expenditure may be made except as authorized by an appropriation. In these institutions however pupils from other localities are housed, the expense being paid by the localities from which they come and no return whatever is made to the State for such surplusage as may result from their operation. It seems to me that the general law in reference to other State institutions should also apply to these. They should transmit an itemized statement of their financial operations and a complete report to the Legislature annually concerning their man-

[48] The Governor's opinion that the officers named in the act were not city officers was sustained in Syracuse v. Hubbard (1901), 64 App. Div. 587; appeal dismissed 168 N. Y. 668.

agement. While I am inclined to withhold approval from the bill, to do so would probably seriously interfere with the work which this institution is doing, and as I have no desire to so interfere, I have decided to approve the measure and trust to future legislative action to provide the regulations suggested."

THIRTY DAY BILLS.

May 1.

Memorandum filed with approved Senate bill, chap. 640, amending the Excise Law.

"I have given careful consideration to the various amendments proposed and the different objections urged against this bill. An examination of its various provisions convinces me that there are so many good features in it that I feel constrained to sign it. There has been only one objection seriously urged against the proposed legislation, and I prefer to await the result of its practical operation before condemning the bill as a whole on that account. Should any great hardship be caused, it can be amended next year; but I am inclined to think that the opponents of the bill over-estimate the harm that can come from it under any circumstances."

May 3.

Memorandum filed with approved Senate bill, chap. 704, making the Kings county clerk a salaried officer; Senate bill, chap. 705, making the Kings county sheriff a salaried officer, and Senate bill, chap. 706, making the Kings county register a salried officer.

"These bills seek to do away with the enormous fees which are received by these county officials and to place them upon a salaried basis as are the similar officials of the county of New York. In my judgment this change

is one which must commend itself to the sound business judgment of every citizen of the county affected. The only question which has been raised in regard to these bills, and one to which I have given careful consideration, is that as to whether they are city bills and so require the approval of the mayor of the Greater New York. A careful examination of the bills convinces me that they are not such and that any action that he may have taken is of no force or effect. They relate solely to county officers of the county of Kings, and the fact that the county of Kings is now within the Greater New York does not change their character in this respect.

Believing that the change is a beneficial one, and that the bills are properly before me for action, I have concluded to sign the same." (See note 22, *ante,* p. 208.)

May 3.

Veto filed with Assembly bill entitled "An act making an appropriation for continuing the acquisition of land in the Adirondack park and for the extension of the forest preserve in the counties of Delaware, Greene, Sullivan and Ulster."

"In my judgment the time has arrived to consider what the policy of the State is to be with reference to the acquirement of land in the Adirondacks for the Forest Preserve. Over two millions of dollars have already been expended for that purpose, and as yet no comprehensive plan has been finally determined upon as to the State's policy, and the amount that shall be expended in carrying out the improvement for the preservation of the State's forest and water supply. Until a definite scheme shall have been adopted it seems to me unwise to make small appropriations annually. With the hope that the next Legislature may take up this question and settle the scope within which this improvement is to be carried on, I have concluded to disapprove the present bill." (See note 11.)

May 3.

Veto filed with Assembly bill entitled "An act to amend the penal code in relation to the sale or delivery of uncooked flesh foods on Sunday."

"This bill is an amendment to the so-called O'Connell Sunday Closing Bill which became a law on the 17th day of April, and which provided for the closing of butcher shops throughout the State on Sunday. After its passage certain representations were made and an amendatory measure was introduced and passed under an emergency message from the Executive, the object being to afford a hearing to those who claimed they had not received the proper consideration which they should have been accorded during the passage of the O'Connell bill.

I have given this subject careful consideration and am brought to the conclusion that an amendment at this time would be unwise, because I am convinced that the many hardships which its opponents seem to fear will not be realized when the act becomes operative. While perhaps as in this case temporary hardship may result to some of our people, yet laws that have been thoroughly considered and have received proper deliberation from the law making power of the State are generally sanctioned by the accommodation of the people to the conditions which they impose and are not found to be burdensome. The converse of this proposition is also true, that whenever laws go beyond the purpose for which they were enacted and interfere with the rights of any of our citizens, they are sure to be repealed or amended by eliminating obnoxious conditions.

For the reasons above set forth, I have concluded to withhold my approval from the bill."

May 3.

Veto of an item of appropriation contained in Assembly bill, chap. 642, entitled "An act making an appropriation for certain expenses of government and supplying deficiencies in former appropriations."

"First: 'For installing plant for printing embossed books and literature for the use of the blind, the sum of one thousand dollars, or so much thereof as may be necessary to be expended under the direction of the superintendent of state prisons.'

This is objected to for the reason that I do not believe this work should be done in the prison and the bill for this purpose has already been disapproved."

May 3.

Veto of an item in Assembly bill, chap. 702, appropriation for Eastern New York Reformatory.

"The following item is not approved for the reason that I believe it an unnecessary expenditure at this time:

'For galleries and stairs at ends of cell blocks, thirty-six hundred and twenty-eight dollars.'"

The foregoing item appears in the statute as printed in the session laws.

May 3.

Veto of an item in Assembly bill, chap. 709, appropriation for New York State Soldiers' and Sailors' Home.

"The following item is not approved for the reason that I believe it to be an unnecessary expenditure at this time:

'For the construction of cement walks, two thousand five hundred dollars.'"

May 3.

Veto of items in Assembly bill, chap. 708, appropriation for the Syracuse Institution for Feeble-Minded Children.

"The following items are not aproved for the reason that I believe them unnecessary expenditures at this time:

'For renewal of laundry machinery, one thousand six hundred dollars; for stone and cement sidewalks, one thousand dollars.'"

May 3.

Veto of an item in Senate bill, chap. 701, appropriation for the Orthopedic hospital.

"The following item is not approved for the reason that I believe it an unnecessary expenditure at this time:

'For isolating pavilion of wood construction for contagious diseases, one thousand five hundred dollars.'"

May 3.

Veto of items in Assembly bill, chap. 710, appropriation for quarantine station.

"The following items are hereby not approved for the reason that I believe them unnecessary expenditures at this time:

'For addition to boiler house with extra foundations on account of its location, three thousand dollars; for filling around buildings, seven thousand five hundred dollars; for new lighting and wiring and electric cable, eleven thousand dollars; for plumbing, two thousand five hundred dollars.'"

May 3.

Veto of items in Assembly bill, chap. 700, appropriation for the Rome Custodial Asylum.

"The following items are not approved for the reason that I believe them unnecessary expenditures at this time:

'For vegetable storehouse, two thousand dollars; for grading and improving grounds, two thousand five hundred dollars; for approach to stable, two hundred and fifty dollars; for cylinder locks for buildings B and E, eight hundred and fifty dollars.'"

May 3.

Veto of items in Assembly bill, chap. 707, appropriation for the Thomas Asylum for Indian children.

"The following items are not approved for the reason that I believe the same unnecessary expenditures at this time:

'For power-house, chimney-stack and connecting subways twelve thousand six hundred dollars; two new boilers, connections and accessories, five thousand dollars; conduit piping, tanks and fittings, two thousand five hundred dollars; additional dynamo, lights and wiring, one thousand five hundred dollars; moving and converting nursery into laundry, two thousand dollars; equipment and betterments, one thousand dollars.'"

May 3.

Veto of items in Assembly bill, chap. 703, appropriation for New York State Reformatory at Elmira.

"The following items are not approved for the reason that I believe the same unnecessary expenditures at this time:

'For piping in conduits with necessary connections, valves, et cetera, ten thousand dollars; for two engines and dynamos with switch board and connections thereto, two thousand five hundred dollars.'"

May 3.

Veto of the following items in the supply bill, chap. 645.

"*Comptroller*—First: 'For the expenses of examination and investigations of public institutions, made pursu-

ant to law, the sum of two thousand dollars, or so much thereof as may be necessary to be paid upon vouchers audited by the comptroller.'

This is objected to as an unnecessary expense.

Second: 'For the comptroller for furnishing and refitting the office of the transfer tax bureau and land bureau with steel filing cases for the safe keeping of the statistics, documents and records of said departments, the sum of seventeen thousand dollars, or so much thereof as may be necessary, such work to be done upon plans and specifications of the State Architect. None of this appropriation shall be available until after a contract shall have been let therefor after due advertisement, to the lowest responsible bidder and a satisfactory bond for the completion of the same shall have been approved and filed with the comptroller.'

This is objected to because it provides for the carrying out of this improvement in a piecemeal manner. If this work is necessary, an estimate should be made of the ultimate cost of the entire work so that the expense that is to be incurred for the completion of the work may be known in advance.

Third: 'For the comptroller for the purpose of paying after due audit John R. Thomas for services claimed to have been rendered as architect pursuant to his contract with the building commissioners of the Eastern New York Reformatory, the sum of thirteen thousand dollars, or so much thereof as may be necessary, on receipt in full by said John R. Thomas of all claims against the State of every name and nature under said contract or for plans furnished or services rendered.'

This is objected to on the ground that no sufficient reason has been furnished for this appropriation and this claim is open to considerable question.

Attorney General—Fourth: 'For the Attorney General the sum of ten thousand dollars, or so much thereof as may be necessary, to pay attorneys, counsel and commissioners employed by him in pursuance of law, on the audit of the comptroller.'

This is objected to because the appropriations already made for the attorney general are large enough to take care of this item.

Fifth: 'The sum of thirty-five hundred dollars, being a portion of the unexpended balance of the appropriation for the commissioners of statutory revision made by chapter 419 of the laws of 1900 is hereby reappropriated for the payment of the balance due to Horace E. Deming for services as counsel in connection with the investigation of the charges against the late district attorney of the county of New York, the same to be available upon the filing with the comptroller of a receipt in full for all services and expenses.'

This is objected to on the ground that authority for this claim against the State has not been satisfactorily established.

State Engineer and Surveyor—Sixth: 'For the State Engineer and Surveyor for completing new blue line maps of the Erie, Oswego and Champlain canals, the sum of one thousand dollars, or so much thereof as may be necessary, which sum shall be payable from the canal fund and be immediately available.'

I do not regard this as a necessary expense at this time.

Department of Public Instruction—Seventh: 'For the superintendent of public instruction for the publication of twenty thousand copies of the "Manual of Patriotism" recently prepared by him in accordance with the provisions of chapter four hundred and eighty-one of the laws of eighteen hundred and ninety-eight, the sum of thirteen

thousand dollars, provided the same can be furnished at not to exceed said sum, and provided that the person, firm or corporation now holding the contract for such printing shall prior to the publishing thereof, file with the comptroller a suitable agreement in writing to accept a sum therefor not exceeding the sum above specified, and expressly waive any further sum to which he or they may or might be entitled under such contract therefor. The said copies to be distributed as follows: Fifteen thousand by the superintendent of public instruction to the public schools of the State to enable the school authorities to supply each room in the various school buildings with a copy thereof; and five thousand copies to be distributed as follows: To each senator for the year nineteen hundred and one and two, forty; and to each member of Assembly for the year nineteen hundred one, twenty copies '.

This is objected to because it is duplication of work already performed and is not considered necessary.

State Historian—Eighth: ' For the State Historian for the translation of copied documents in the possession of the ecclesiastical archives of Amsterdam and The Hague relating to the colonial history of the State of New York, and for their preparation for publication, the sum of four thousand five hundred dollars, or so much thereof as may be necessary, paid on the audit of the comptroller '.

This is objected to for the reason that several appropriations have been made for this purpose and the matter should rest until the expense can be ascertained.

Society for the Reformation of Juvenile Delinquents, Randall's Island—Ninth: ' The sum of seven hundred and fifty dollars, being a portion of the unexpended balance of the appropriation of fifteen hundred dollars made by chapter two hundred and eighty-two of the laws of nineteen hundred, for raking out and repointing main walls, is hereby reappropriated for the rebuilding, repairing and

restocking of green houses recently destroyed and injured by fire, and the payment of seven hundred and fifty dollars of said appropriation is hereby reappropriated for the purpose as originally indicated '.

This is objected to as unnecessary.

National Guard—Tenth: 'For the Adjutant General for the purpose of properly repairing and equipping the boat "United States steamship Restless" to be loaned by the Federal authorities and to be stationed at Charlotte in Monroe county, the sum of eight thousand five hundred dollars, or so much thereof as may be necessary '.

This is objected to because of the expenditures already provided for in the National Guard and this item is of doubtful expediency for the present year.

Matteawan State Hospital—Eleventh: 'For a propagating and green house, two thousand five hundred dollars '.

This is objected to as unnecessary.

Superintendent of Public Buildings—Twelfth: 'For mezzanine floor, partitions, electric lighting, painting, plumbing and all other necessary labor and materials, in the office of the Commissioner of Agriculture in the State Capitol in order to remove thereto from agricultural and geological hall, the offices of the State Fair commission and the State bureau of farmers' institutes, the sum of fifty-one hundred dollars, or so much thereof as may be necessary '.

This is regarded as unnecessary this year.

Thirteenth: 'For filing cases, shelving, double desks, painting, gas fixtures, partitions and all other necessary labor and materials to equip additional rooms in the State Hall for the State Engineer and Surveyor, and to remove the office of the State Paleontologist from said rooms to

agricultural and geological hall, the sum of forty-nine hundred and fifty dollars, or so much thereof as may be necessary '.

This is regarded as unnecessary.

Fourteenth: 'For additional improvements to Agricultural and Geological hall, including the moving of exhibits thereto from State hall, mezzanine floor, new cases to ceilings, doors, plumbing, speaking tubes, gas fixtures, changing mineral cases, cutting new windows, partitions, and all other necessary labor and materials, the sum of eighty-five hundred dollars '.

This is regarded as unnecessary at this time.

Superintendent of Public Works—Fifteenth: 'For the superintendent of public works for the purpose of completing the clearing out, deepening and improving of the channel of Sawyer's creek, and providing an additional means of drainage, from the Nash Road to Martinsville, in the town of Wheatfield, in the county of Niagara, the sum of two thousand five hundred dollars, or so much thereof as may be necessary. The work to be done and moneys expended upon plans and specifications prepared and furnished by the State Engineer and Surveyor, and all of said work as far as practicable to be done by contract, and let to the lowest bidder or bidders '.

This is objected to on the ground that the liability of the State to do this work is extremely doubtful.

Sixteenth: 'For the superintendent of public works for the enlarging of the sluices and the raising of the dyke along the Black river in the town of Denmark and the town of Croghan, the sum of six thousand dollars, or so much thereof as may be necessary, said work to be performed upon plans and specifications to be furnished by the State Engineer and Surveyor '.

This item is objected to for the reason that it is disapproved by the Superintendent of Public Works.

Seventeenth: 'For the superintendent of public works for the cleaning of the channel of Black creek in the town of Chili from where the Genesee valley canal crosses said creek, west to Brown bridge, said work to be done upon plans and specifications to be prepared by the State engineer and surveyor, the sum of twenty-five hundred dollars, or so much thereof as may be necessary'.

This item is objected to for the reason that it is disapproved by the Superintendent of Public Works.

Eighteenth: 'For the superintendent of public works the sum of fifteen hundred dollars, or so much thereof as may be necessary, for the cleaning out of the channel and the repair of the banks of that portion of Steele's creek provided for by chapter 365 of the laws of 1896'.

This item is objected to for the reason that it is disapproved by the Superintendent of Public Works.

Nineteenth: 'For the superintendent of public works the sum of five thousand dollars or so much thereof as may be necessary to restore, repair and protect the work done along the channel of Newtown creek under chapter 949 of the laws of 1896 and act supplemental thereto, by the removal of bars and the construction of earth and timber dykes from the Lehigh Valley railroad bridge northerly along said creek'.

This is objected to for the reason that there is no obligation on the part of the State to do this work.

Miscellaneous—Twentieth: 'For the publication of two thousand additional sets of the debates of the constitutional convention, together with the indices therefor, the sum of sixteen thousand dollars; seven hundred and fifty sets of said debates shall be for the members of the Senate for the year 1901, to be delivered to the clerk of the Senate; twelve hundred sets for the members of the Assembly for the year 1901, to be delivered to the clerk

of the Assembly; and fifty sets to be distributed to the public libraries, and to be delivered to the Superintendent of Public Instruction'.

This is objected to for the reason that large appropriations have already been made for this work and it is considered unnecessary at this time.

Twenty-first: 'To the New York commission for the battle fields of Gettysburg and Chattanooga, the sum of thirty-six thousand dollars, or so much thereof as may be necessary, for the purpose of paying for twelve thousand copies of the final report of the said commissioners, "New York at Gettysburg", to be distributed as follows: To each senator of the Senate of nineteen hundred and one and two, sixty copies, to each member of Assembly for the year nineteen hundred one, thirty copies, and the remainder to be distributed by said commission to New York troops who participated in the battle of Gettysburg; provided, however, that this appropriation shall not be available, nor any work performed on account thereof, until the State legislative printer shall have filed with the comptroller an agreement to furnish the books herein provided for, within the appropriation hereby made for the same'.

This item is objected to as unnecessary for the reason that a large amount has already been expended on the publication of this work.

Twenty-second: 'The unexpended balance amounting to nine hundred and forty-one dollars and forty cents heretofore appropriated by chapter 207 of the laws of 1898 for the digging of a canal from Shinnecock bay to Great South bay is hereby reappropriated for the same purpose'.

This is objected to on the ground that it is disapproved by the Superintendent of Public Works.

May 11.

Veto filed with Senate bill entitled "An act to facilitate transportation connections with wharves, docks and piers in the cities of this State."

"This bill proposes through general legislation to confer upon the New York and New Jersey Bridge Company certain rights within the city of New York for the construction of elevated railroad structures upon West street, as approaches or appurtenances of the bridge itself.

At the hearing before the Executive it was clearly developed that the conditions provided for in the bill could apply to no other municipality than the city of New York, and that no other corporation could avail itself of the rights and privileges granted by the proposed bill except a corporation such as the New York and New Jersey Bridge Company which now has a right to build a bridge of the class and character so clearly defined in the bill. Hence, however cunningly the bill may have been drafted to evade the constitutional provision, all subterfuge may be swept aside and the measure considered as affecting the city of New York alone.

Law is common sense and whenever ordinary judgment can foresee the application of a law so far-reaching in its effect, so vital to the interest of a community as this act, we should consider the subject of which it treats as within the letter as well as the spirit of the Constitution. Therefore, the elaborate arguments as to whether such a law is general enough to override the protection which surrounds the granting of franchises within the municipalities should count for but little when we know that as a matter of fact no legal interpretation of an act should permit the Legislature to do a wrong, and sweep away restrictions and grant rights to one that are denied to others. Assuming that these premises are correct, we can consider the subject from the standpoint of its effect upon

the city of New York. Calling an elevated structure of the character sought for in this bill an approach to the proposed bridge, within the generally accepted meaning of such a term, does not make it one. Nor can the New York and New Jersey Bridge Company construct, under the act of Congress, any approach in the city of New York without first securing the consent of the Sinking Fund Commissioners. Any act which seeks what this measure proposes to do without such consent, by compelling in a mandatory manner this approval, thereby nullifies the charter rights so recently conferred by the Legislature upon the greater city and makes inoperative the protection designed by the Federal statutes. Neither can property be taken without due process of law. The franchises given to the city of New York by the Legislature are among its most valuable properties. Therefore, when it is sought to give ownership of them in perpetuity without granting even the power of condemnation, the city is powerless to secure their value from those who thus control the valuable water front so essential to the immediate and future needs of our greatest port. The contention that this grant is in effect not a monopoly given by the Legislature to a private corporation is not borne out by a consideration of the bill. No provision is made for the use of this elevated road by other bridge companies which may build in the future, and a perpetual grant would place all such corporations at the mercy of the corporation this bill seeks to endow with these extraordinary powers. In my opinion the states of New York and New Jersey have already been liberal enough with this company, and if it cannot exist without these extra powers it should go to the board which already has the authority to grant such rights as may be desired and the power to ask for such additional grants as may be necessary at the hands of the Legislature. The people of New York are the sole judges of their own needs; upon them

rests the responsibility for the growth and prosperity of their home. No antagonistic combination actuated by selfish aims, which seeks to prevent great improvements should be tolerated any more than other combinations which seek to obtain, in the face of constitutional and statutory restrictions, rights without adequate compensation. In the hope that these improvements may come from the people themselves, and that civic pride will promote them rather than private gain, I am constrained to withhold my approval from the bill in question." *

May 11.

Veto filed with Assembly bill entitled "An act to extend and regulate liability of employers to employees and others for injuries suffered by them."

"Owing to the fact that there has been for a long period considerable agitation for an employer's liability bill, and to the conscientious thought which was given to the preparation of this bill by those having the matter in charge, I have devoted unusual study to its provisions and their probable effect. It is unfortunate that the bill has had inserted in it a provision which interferes with the rights of those who are not employees and whose mode of procedure in bringing actions against corporations for damages sustained would be very materially curtailed. The whole bill therefore must be considered from the standpoint not only of an employers' liability act but also as affecting the statutory limitations now existing in actions for negligence. Under the Massachusetts employers' liability act the term within which notice must be given is sixty days and an action must be commenced thereunder within one year, but no curtailment is made as to the rights of those who are not employees. The State of Connecticut has a separate act with reference solely to

* Const. 1894, Art. 1, § 6, eminent domain; Art. 3, § 18, exclusive franchise.

the rights of the great corporations, and it restricts the right to recover unless notice has been given within six months. No amendment to the statute of limitations in this State has been made in a great many years, and in the meantime railroad and other corporations have extended their business and the liabilities and contingencies which have resulted from such extensions have caused actions for damages to multiply to a great extent. For the reason that this notice would enable the corporation to make a full investigation of the circumstances of each case while the facts are more readily ascertained, and probably lead to the settlement of many claims without litigation; and at the same time protect the public against a recurrence of accidents from the same cause, I believe it to be just and fair to the corporations and also to be in the interest of the general public. Were the act under consideration one which did really contain new provisions and more thoroughly bring into our law the liability of employers to their employees, I should not regard the objection recited above as being vital to the bill; but after careful study of the proposed act I am led to the conclusion that under its provisions no new or substantial rights accrue to the employee. Therefore, so far as they are concerned, nothing would be gained by the signing of this bill, and the objections urged to the feature referred to that has been injected into the measure are of such importance to every citizen of the State that I am constrained to refuse my approval to this bill, preferring to leave the subject as it is now governed by our laws. This is done in the full belief and hope that the next Legislature will take up the subject in an intelligent way and frame an enactment, both as to employers' liability and as to the limitation which I am convinced should exist with reference to the notice of action, upon lines which would be more equitable and just to employers, to employees and to others who may be injured by the negligent acts of corporations." (See note 8, *ante*, p. 190.)

May 11.

Veto filed with Assembly bill entitled "An act to authorize the audit and allowance of claims against the city of New York in connection with the contests of certain judgments against the city of New York."

"Careful consideration of this bill develops the fact that it is for the purpose of re-imbursing a tax payer, or any other person, for expenses in connection with certain suits against the city of New York. Heretofore no provision has been made for the re-payment by a municipality against whose officers actions are brought by tax payers, for expenses of such suits. This case is one in which the comptroller of the city is particularly interested, he having, directly or indirectly, brought an action to set aside confessions of judgment in favor of certain contractors. While he has been successful in securing a favorable decision from the various courts to the effect that the corporation counsel exceeded his authority in confessing these judgments, it is also a fact that none of the judgments which his office allowed had been re-paid to the city. If it was not a fact that the Legislature had already provided by chapter 284 of the laws of 1900 that such action should not be taken by the corporation counsel, this decision would be of more value to the city of New York. Or if the comptroller had contested and prevented the payment of the claims in question, amounting to several hundred thousand dollars, there would be some justification for the re-payment of these disbursements. I do not believe that the approval of this bill is justified by the statement of facts recited above. In addition to this I am convinced that it would be a dangerous precedent which in time might become onerous and burdensome to the municipalities.

For these reasons I am constrained to withhold Executive approval."

May 11. The omnibus veto included the following bills:

Assembly bill number 1237, entitled "An act to amend the Greater New York charter in relation to the assessment and taxation of lands used as reservoirs, etc."

Assembly bill number 2555, entitled "An act to amend the Forest, Fish and Game law relative to close season for black bass in certain localities."

Assembly bill number 1677, entitled "An act to authorize the city of New York to pay the fair and reasonable value of public lighting actually furnished by Queens Borough Electric Light and Power Company."

Assembly bill number 1495, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of John Moore of Syracuse, N. Y., against the State of New York for compensation for work done and services performed and materials furnished for the State, and to render judgment therefor."

Assembly bill number 1704, entitled "An act to regulate the keeping of employment agencies in the city of Greater New York where funds are charged for registration or for procuring or assisting to procure employment or situations."

Assembly bill number 1743, entitled "An act to amend the code of civil procedure relating to the enforcement of certain judgments in the municipal court of the city of New York."

Assembly bill number 1861, entitled "An act to authorize the board of estimate and apportionment of the city of New York to audit and allow and also authorize and direct the comptroller of the said city to pay the claims of William Grady, Patrick Mannix, John Bender and George E. Glendenning against the city of New York for salaries alleged to be justly due them as sealers of weights and measures from the second day of May, 1895, to the first day of January, 1898."

Assembly bill number 2154, entitled "An act authorizing the board of estimate and apportionment of the city of New York to determine and allow the claim of John J. White of said city,

for services rendered as dock master of the department of docks of said city and to provide for the payment of such claim."

Assembly bill number 2269, entitled "An act to amend the Forest, Fish and Game law in relation to penalties for unlawful taking or interfering with Antwerp or homing pigeons."

Assembly bill number 1983, entitled "An act to amend the Forest, Fish and Game law relative to fishing through the ice in the waters of Washington county."

Assembly bill number 1859 (Senate reprint 1447), entitled "An act to amend the Forest, Fish and Game law, empowering the Forest, Fish and Game commission to name places of refuge for game."

Assembly bill number 2481, entitled "An act to amend section 18 of chapter 21 of the laws of 1886, entitled 'An act providing for commutation of sentences for good behavior of convicts in the prisons and penitentiaries of this State,' relative to insane criminals."

Assembly bill number 1797, entitled "An act to amend the civil service law, in relation to the exempt class."

Assembly bill number 934, entitled "An act for the relief of certain villages."

Assembly bill number 1621, entitled "An act to amend section 522 of the code of civil procedure, relative to denial of allegations of copartnership."

Assembly bill number 2462, entitled "An act to amend section one of chapter 378 of the laws of 1883, entitled 'An act in relation to receivers of corporations,' relative to actions brought against corporations."

Assembly bill number 897, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Benjamin C. Levy against the State of New York for damages alleged to have been sustained by him, and to render judgment therefor."

Assembly bill number 1560 (Senate reprint 1327), entitled "An act to amend the town law, relative to the compensation of town officers."

Assembly bill number 2321, entitled "An act to amend the railroad law in relation to the acquisition of property by street surface railroad corporations."

Assembly bill number 1725, entitled "An act to amend the Forest, Fish and Game law in relation to the Adirondack park."

Assembly bill number 2211, entitled "An act to amend the tax law, relative to publication of notices by collectors in the county of Suffolk."

Assembly bill number 2020, entitled "An act to amend the code of civil procedure relating to attachment."

Assembly bill number 1849, entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow, and also authorizing the comptroller of the city of New York to pay Denis O'Sullivan compensation for his work, labor and services actually rendered to the city of New York as stenographer in the municipal court of the city of New York, borough of Manhattan, fifth district, from the tenth day of August to the sixteenth day of October, 1899."

Assembly bill number 1354, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Mary Kineally, as heir and next of kin of William A. Kineally, deceased, to certain funds or moneys held by the State."

Assembly bill number 98 (senate reprint 718), entitled "An act to amend section 10 of chapter 418 of the laws of 1897, entitled 'An act in relation to liens constituting chapter 49 of the general laws,' in relation to the filing of notice of lien."

Assembly bill number 1765, entitled "An act to authorize the board of estimate and apportionment of the city of New York, in its discretion, to examine into the facts concerning the services claimed to have been rendered by John A. Turner in the department of finance in the city of New York, in the years 1899 and 1900."

Assembly bill number 910, entitled "An act for the relief of David W. Dowling, in payment of services rendered by him in and for the city of New York."

Assembly bill number 1219 (Senate reprint 1063), entitled "An act authorizing the court of claims to hear and determine the alleged claims against the State for damages, permanent or otherwise, arising from the rebuilding and raising the dam at Oswego Falls in the Oswego river."

Assembly bill number 1372, entitled "An act to incorporate the trustees of the Eastern Star hall and home association."

Assembly bill number 2328, entitled "An act to empower the county of Westchester to pay to the Westchester County Society for the prevention of cruelty to children, an amount not to exceed one thousand dollars annually for the purposes for which said society was organized."

Assembly bill number 1940, entitled "An act to authorize and direct the state board of law examiners to permit John W. Browne to take the bar examination of said board of examiners upon producing and filing certain certificates and proofs with said board."

Assembly bill number 980, entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow, and also authorizing the comptroller of the city of New York to pay to Joseph H. Garvey compensation for services actually rendered to the city of New York in the department of public charities in the year 1891 pending the preparation of municipal civil service lists for the position of superintendent of Bellevue hospital dispensary."

Assembly bill number 1762, entitled "An act in relation to the admission of citizens of this State to the examinations of the state board of law examiners."

Assembly bill number 2456, entitled "An act to amend section 651 of the penal code relative to unlawful interference with electric meters and wires."

Assembly bill number 2309, entitled "An act to amend section 614 of the penal code relating to the directors of corporations."

Assembly bill number 2165 (Senate reprint 1452), entitled "An act to amend the Forest, Fish and Game law relative to close season for grouse."

Assembly bill number 2185, entitled "An act for the sale of the lands described in a certain deed made by Stephen B. Munn and wife to William H. Munn, as trustee."

Assembly bill number 1549, entitled "An act to amend the code of criminal procedure in relation to the commitment of vagrants."

Assembly bill number 2171, entitled "An act to amend the state charities law relating to the transfer of inmates to the penitentiary or Elmira or Eastern New York reformatories."

Assembly bill number 2170 (Senate reprint 1449), entitled "An act to amend the Forest, Fish and Game law relative to set lines for fishing."

Assembly bill number 2168, entitled "An act to amend the insurance law, relative to limitation of risks."

Assembly bill number 2526, entitled "An act to amend chapter 986 of the laws of 1896, entitled 'An act to incorporate the Patent and Copyright Protective association of New York,' as amended by chapter 496 of the laws of 1898."

Assembly bill number 1808 (Senate reprint 1297), entitled "An act to release the interest of the people of the State of New York in the lands of which Jacob Froelich died seized to William Eigenbrod, subsequent grantee of Elizabeth Froelich, widow of said Jacob Froelich."

Assembly bill number 2215, entitled "An act to amend section 3208 of the code of civil procedure relative to the service of summons and complaint and proof of service."

Assembly bill number 2251, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Wilbur K. Mathews against the State for alleged damages sustained by him by reason of the vesting of title in the State of New York to certain real estate situate in the twenty-fourth ward of the borough of the Bronx, New York City, New York."

Assembly bill number 1777, entitled "An act to amend the charter of the city of New Rochelle, providing for the election of a comptroller et cetera."

Assembly bill number 2077, entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow the claim of Charles Coyle against such city for services alleged to have been rendered as subpoena clerk in the court of special sessions of such city and to provide for the payment of such claim."

Assembly bill number 1367, entitled "An act to authorize and provide for the enlargement and improvement of the existing sewer system in Residence Park, within the city of New Rochelle, Westchester county, and for the payment of the expenses thereof."

Assembly bill number 1804, entitled "An act to regulate the practice of architecture."

Assembly bill number 2560, entitled "An act to enable Charles E. Abbott to take the necessary examinations for admission to practice medicine in this State."

Assembly bill number 2160, entitled "An act to amend the Greater New York charter relative to prevention of fires, explosives and combustible materials."

Assembly bill number 2217, entitled "An act to amend the code of civil procedure relating to depositions."

Assembly bill number 1983, entitled "An act to amend the forest, fish and game law in relation to fishing through the ice in the waters of Washington county."

Assembly bill number 2555, entitled "An act to amend the forest, fish and game law relative to close season for black bass in certain localities."

Assembly bill number 1714, entitled "An act to amend the code of civil procedure, relating to the city court of the city of New York."

Assembly bill number 786, entitled "An act to provide for deepening and straightening Oak Orchard creek and making an appropriation therefor."

Assembly bill number 2058, entitled "An act to provide for construction of a stone arch over the Canastota creek over the

mouth of the state sewer emptying into said creek near the northerly side of Chappel street in the village of Canastota and making an appropriation therefor."

Assembly bill number 2262, entitled "An act making an appropriation for the purpose of carrying into effect chapter six hundred and fifty-four of the laws of one thousand eight hundred and ninety-nine, entitled 'An act to provide for the payment by the State of the salaries of all employes of a state department who enlisted as volunteers in the United States service for the war with Spain, during such service.' "

Assembly bill number 2032, entitled "An act to provide for the completion of repairs and improvements to the Skaneateles feeder of the Erie canal and making an appropriation therefor."

Assembly bill number 1888, entitled "An act authorizing the construction of a new steel bridge over the Erie canal at Water street in the village of Lyons, Wayne county, New York, and abutments and approaches thereto and making an appropriation therefor."

Assembly bill number 1410, entitled "An act providing for the construction of a steel bridge over the Otsquago creek on State lands adjacent to the Erie canal aqueduct number eleven, in the town of Minden, Montgomery county, and the necessary repairs to the existing abutments and approaches thereto, and making an appropriation therefor."

Assembly bill number 26, entitled "An act authorizing the construction of a steel bridge and abutments and approaches thereto over the canal slip from the Erie canal to the Niagara river on North Niagara street, in the village of Tonawanda, Erie county, New York, together with the adjacent canal retaining walls and making an appropriation therefor."

Assembly bill number 80, entitled "An act to provide for repairing and reconstructing the banks and channels of Glen creek in the village of Watkins and making an appropriation therefor."

Assembly bill number 2381, entitled "An act to amend chapter four hundred and forty-eight of the laws of nineteen hundred,

entitled 'An act to provide for the drainage of the Conewango creek in the county of Chautauqua and making an appropriation and reappropriation therefor.'"

Assembly bill number 2270, entitled "An act making an appropriation for the drainage of the Conewango creek in the county of Chautauqua."

Assembly bill number 1906, entitled "An act for the construction of a sewerage system for the state normal school in the village of Brockport, Monroe county, making an appropriation therefor and authorizing the connection of such sewerage system with the proposed system for the village of Brockport."

Assembly bill number 2502, entitled "An act making an appropriation for the settlement of the balance due upon the contract for legislative printing, which expired October first, eighteen hundred and ninety-nine."

Assembly bill number 385, entitled "An act to authorize the building of an extension of a dyke for the protection of property adjacent to the Chemung river in the town of Corning in the county of Steuben and making an appropriation therefor."

Assembly bill number 2575, entitled "An act to amend chapter 336 of the laws of 1899, entitled 'An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of the several counties containing towns, villages or cities bonded to aid in the construction of any railroad passing through such towns, villages or cities, on account of the payment to the State of the State taxes collected from such railroads within such bonded towns, villages or cities, in relation to the disposition of money awarded and the time for presenting claims."

Assembly bill number 1934, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the claim or claims of the Brandow Printing Company and to render judgment therefor."

Assembly bill number 369, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of S. F. Hess and company against the State for

damages alleged to have been sustained by the said S. F. Hess and company and to render judgment therefor."

Senate bill number 1243, entitled "An act to amend section 2624 of the code of civil procedure relating to the validity and construction of testamentary provisions."

Senate bill number 1113, entitled "An act to enable owners of property liable to be assessed for a local improvement to review and correct the fixing of the district of assessment therefor."

Senate bill number 1392, entitled "An act releasing to the owners of adjoining lands parts of Albany street in the city of Buffalo."

Senate bill number 834, entitled "An act to amend chapter 686 of the laws of 1894, entitled 'An act for the preservation of macadamized public highways in Queens county in relation to railroads on certain streets,' as amended by chapter 548 of the laws of 1899 and chapter 104 of the laws of 1900, in relation to the construction of railroads on various streets and avenues."

Senate bill number 224, entitled "An act for the relief of John M. Williamson assignee of the claim of the Jamaica Electric Light Company against the city of New York for work, labor, services, materials and electricity furnished to the city of New York."

Senate bill number 1337, entitled "An act to make the office of sheriff of Essex county a salaried office in part and to regulate the management thereof."

Senate bill number 1284, entitled "An act regarding highways constructed under and pursuant to the authority of chapter 493 of the laws of 1892 and to provide for the assessment of the cost thereof upon the lands benefited thereby."

Senate bill number 1533, entitled "An act to amend chapter 410 of the laws of 1882, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York relating to Hell Gate Pilots.'"

Senate bill number 482, entitled "An act to amend chapter 326 of the laws of 1895, entitled 'An act to provide for the incorpora-

tion of associations for loaning money on personal property and to forbid certain loans of money, property or credit.'"

Senate bill number 1409, entitled "An act to authorize the comptroller of this State to hear and determine the several applications of David C. Leech and Minnie A. Lord for the cancellation of the sale of 1890 for the taxes of 1860 of a tract of land in the town of Schroon, county of Essex, State of New York, described as 'Rogers (Platt) and company's road-patent lot one, subdivision eleven thereof, containing 94 acres more or less' and conveyed to the people of the State of New York."

Senate bill number 1083, entitled "An act to amend the highway law, being chapter nineteen of the general laws."

Senate bill number 1084 (Assembly reprint 2409), entitled "An act to amend section 217 of chapter 20 of the laws of 1900, known as the Forest, Fish and Game Law."

Senate bill number 1119, entitled "An act authorizing the selection of certain lands in the town of Ausable, Clinton county, and the town of Chesterfield, Essex county, known as the 'Ausable Chasm,' with a view of acquiring the same for a State park, preserving the scenery thereof, and making it a place of public resort and pleasure."

Senate bill number 1164, entitled "An act to amend section 661 of the code of criminal procedure in reference to the criminal insane confined in any asylum."

Senate bill number 1144, entitled "An act to amend section 394 of the penal code."

Senate bill number 551 (Assembly reprint 2376), entitled "An act to amend the domestic commerce law, in relation to the size of apple, pear, quince and potato barrels."

Senate bill number 1078, entitled "An act in relation to admission to examinations for license to practice veterinary medicine."

Senate bill number 974, entitled "An act to amend sections 150 and 582 of the code of civil procedure, so as to enable all persons arrested or attached and held to bail on civil process to deposit money in lieu of bail."

Senate bill number 1385, entitled "An act to amend the agricultural law, entitled 'An act in relation to agriculture constituting articles one, two, three, four and five of chapter thirty-three of the general laws,' as amended by chapter 113 of the laws of 1898, to prevent fraud in the sale of paris green."

Senate bill number 1258, entitled "An act to amend chapter 59 of the laws of 1882, entitled 'An act to incorporate the Buffalo merchants' exchange' and the acts amendatory thereof and supplemental thereto."

Senate bill number 799, entitled "An act to amend chapter 73 of the laws of 1898, amendatory of chapter 337 of the laws of 1897, entitled 'An act conferring additional powers upon the trust companies within the counties of this state containing upwards of three hundred thousand and less than six hundred thousand inhabitants.'"

Senate bill number 1482, entitled "An act providing for the appointment of referees by the justices of the appellate division, supreme court, for the first judicial department."

Senate bill number 1032, entitled "An act to amend sections 2647, 2649, 2651, 2653a, 2626, 2627, 2588 of the code of civil procedure, relating to revocation of probate, and relating to award of jury trial upon reversal in probate cases."

Senate bill number 887, entitled "An act to amend chapter 108 of the laws of 1891, entitled 'An act to make the office of sheriff of Erie county a salaried office in part and regulating the management of said office,' by providing for the compensation of the under-sheriff and deputy sheriffs designated by the board of supervisors of said county."

Senate bill number 1305, entitled "An act entitled An act to amend chapter 182 of the laws of 1892, entitled 'An act to incorporate the city of Mount Vernon."

Senate bill number 1370, entitled "An act to amend chapter 128 of the laws of 1899, entitled 'An act to incorporate the city of New Rochelle' as amended by chapters four hundred and sixty-two and five hundred and fifty of the laws of nineteen hundred."

Senate bill number 689, entitled "An act to amend section ten hundred and seventy-five of the laws of eighteen hundred and ninety-seven, entitled 'An act to unite into one municipality under the corporate name of the City of New York the various communities lying in and about New York harbor, including the city and county of New York, the city of Brooklyn and the county of Kings, the county of Richmond and part of the county of Queens and to provide for the government thereof,' in reference to public school janitors."

Senate bill number 1073 (Assembly reprint 2484), entitled "An act to amend chapter six hundred and seventy-seven of the laws of eighteen hundred and ninety-two, entitled 'the statutory construction law.'"

Senate bill number 1116, entitled "An act to amend the forest, fish and game law relative to powers of game protectors."

Senate bill number 1433, entitled "An act to amend section eighty-seven of the forest, fish and game law in relation to fishing in Orange county."

Senate bill number 1404, entitled "An act to define the rights of persons and corporations engaged in the business of storing personal chattels, and to regulate the said business."

Senate bill number 1157, entitled "An act to provide for dredging Scajaquada creek in the city of Buffalo."

Senate bill number 424, entitled "An act to appropriate money for the repair and improvement of the state armory at Watertown, New York."

Senate bill number 979, entitled "An act making an appropriation for the State industrial school."

Senate bill number 788, entitled "An act to provide for the acquisition of additional land for the Creedmoor rifle range, and making an appropriation therefor."

Senate bill number 626, entitled "An act to authorize the reconstruction of wrought iron or steel and removal of canal bridge number one hundred and eighty-five to a point one hundred and thirty-seven and five-tenths feet north of the south line of town lot ninety-eight in the town of Tonawanda, Erie county, New York, and making an appropriation therefor."

Senate bill number 985, entitled "An act to provide for establishing the south boundary line and a portion of the southwest boundary line of the county of Saint Lawrence and the south boundary line of the county of Franklin and making an appropriation therefor."

Senate bill number 533, entitled "An act to provide for the clearing out and deepening of the state reservoir known as Woodhall in the county of Herkimer, and making an appropriation therefor."

Senate bill number 652, entitled "An act to provide for the clearing of Brown's Tract inlet, South inlet and Marion river on Township six and forty Totten and Crossfield's purchase, Hamilton county, and the clearing of the shores thereof, and making an appropriation therefor."

Senate bill number 799, entitled "An act to amend chapter 73 of the laws of 1898, amendatory of chapter 337 of the laws of 1897, entitled 'An act conferring additional powers upon trust companies within the counties of this State containing upwards of three hundred thousand and less than six hundred thousand inhabitants.'"

Senate bill number 1433, entitled "An act to amend section eighty-seven of the Forest, Fish and Game Law in relation to fishing in Orange county."

Senate bill number 337, entitled "An act to incorporate the Utica corn hill benefit association of the city of Utica."

Senate bill number 1369, entitled "An act to amend section fifty-five of the insurance law in relation to insurance upon the lives of minors."

Assembly bill number 2495, entitled "An act to authorize the board of estimate and apportionment of the city of New York to audit and allow, and the comptroller of said city to pay to Peter Androvett, Albert Killmeyer as survivor of N. Killmeyer and Son, Gabriel Dissoway and B. Kreischer and Sons, for work done and supplies furnished for school purposes to school district number seven of the town of Westfield, Richmond county, New York."

Assembly bill number 2496 entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow the claim of John R. Powers of said city for services rendered as dockmaster of the department of docks of said city, and to provide for the payment of such claim."

Assembly bill number 2578, entitled "An act to provide for the payment of certain local assessments against state property in the city of Rochester, in the county of Monroe, and making an appropriation therefor."

Assembly bill number 1873, entitled "An act to amend the Greater New York charter relative to depositing the fire department life insurance fund."

Assembly bill number 2135 (Senate reprint 1595), entitled "An act in relation to Harbor brook and Onondaga lake in Onondaga county."

Assembly bill number 2449, entitled "An act to amend chapter 312 of the laws of 1898, entitled 'An act increasing the jurisdiction of the city court of Albany and relative to a jury list in said court and regulating the practice therein,' as amended by chapter 590 of the laws of 1891."

Assembly bill number 2565, entitled "An act to fix the compensation of the recorder, city judge and judges of the court of general sessions, of the city and county of New York."

Senate bill number 520, entitled "An act to authorize the board of estimate and apportionment of the city of New York to audit and allow the present sheriff of the county of New York such legal expenses as he may be put to, not exceeding five thousand dollars per annum, for three years after the expiration of his term of office."

Senate bill number 1554, entitled "An act to permit and empower the trustee of the relief fund of the fire department of the city of New York to grant a pension to Mary Bowen, the foster mother of Peter F. Bowen, a deceased fireman."

Senate bill number 1359, entitled "An act to amend the stock corporations law, in relation to the issue of debenture bond-stock."

The following bills are not approved by mayors of cities:

Assembly bill number 1406, entitled "An act to provide for the immediate sewerage and drainage of the 29th and 32nd wards of the borough of Brooklyn in the city of New York, and to regulate the payment of assessment for the construction thereof."

Assembly bill number 2455, entitled "An act to amend chapter 143 of the laws of 1892, entitled 'An act to incorporate the city of Niagara Falls,' and the acts amendatory thereof in reference to the term of its officers."

Assembly bill number 2012, entitled "An act to provide for the pensioning of policemen who have served twenty years on the police force in the village of Jamestown."

Assembly bill number 1742, entitled "An act in relation to unpaid taxes, water rates and rents, and tax sales in that part of the city of New York constituting the city of Long Island City prior to January first, 1898, and the towns of Newtown, Flushing, Jamaica, and part of Hempstead, now within the boundaries of the city of New York, and to legalize the payment of taxes, and redemption from tax sales heretofore made, under chapter 635 of the laws of 1891."

Assembly bill number 2123, entitled "An act relating to the discontinuance of proceedings for the improvement of certain streets in the thirtieth ward of the late city of Brooklyn."

Assembly bill number 1436, entitled "An act in relation to the construction, maintenance or operation of railways on Cropsey avenue, between Fourteenth avenue and Twenty-fourth avenue in the borough of Brooklyn, city of New York."

Assembly bill number 1051, entitled "An act to produce equality of taxation in the borough of Queens, city of New York, in respect to the taxes in said borough for years 1898 and 1899."

Assembly bill number 621, entitled "An act to provide for the payment of the claim of Thomas Penders for mason work and material furnished the board of education of Long Island City during the year 1891."

Assembly bill number 1788, entitled "An act to provide for the acquisition by the city of New York of a plot of land in the 12th ward of the borough of Manhattan of said city and the erection thereon of a building for court and other public purposes."

Assembly bill number 2272, entitled "An act to legalize the permits of the park board of the city of New York, and the commissioner of parks for the borough of Manhattan and Richmond in the city of New York, in regard to certain projections on Central Park West and adjoining streets, in New York city."

Senate bill number 1473, entitled "An act to incorporate the Inebriates Home for New York City and to provide funds for the maintenance thereof."

Senate bill number 1254, entitled "An act to authorize the board of estimate and apportionment of the city of New York to examine, audit and allow the claim of Michael Gavin for extra work alleged to have been performed by him for said city."

Senate bill number 584, entitled "An act in relation to the jurisdiction of the department of parks in the city of New York over certain streets and avenues in said city and particularly Manhattan avenue, 110th street, 113th street, Morningside avenue, 123d street, St. Nicholas avenue, St. Nicholas place and 155th street in said city for certain purposes."

Senate bill number 1342, entitled "An act to amend the Greater New York charter relative to exemption of Veteran Volunteer Firemen's Associations in the boroughs of Queens and Richmond."

Senate bill number 800, entitled "An act to amend chapter 537 of the laws of 1893, entitled 'An act to provide for ascertaining and paying the amount of damages to lands and buildings suffered by reason of change of the grade of streets or avenues, made pursuant to chapter 721 of the laws of 1887, providing for the depression of railroad tracks in the 23d and 24th wards of the city of New York, or otherwise, as amended by chapter 567 of the laws of 1894, entitled "An act to amend chapter 537 of

the laws of 1893, entitled 'An act providing for ascertaining and paying the amount of damages to lands and buildings suffered by reason of change of the grade of streets or avenues, made pursuant to chapter 721 of the laws of 1887 providing for a depression of railroad tracks in the 23d and 24th wards of the city of New York or otherwise, relative to damages caused by changing the grade in the borough of Bronx (formerly the 23d and 24th wards) of the city of New York, by permitting the filing of additional claims under the provisions of said chapter 537 of the laws of 1893,' as amended by chapter 567 of the laws of 1894, and to extend the time for filing of such liens."

Senate bill number 938, entitled "An act to provide for the improvement of Prospect avenue in the borough of Brooklyn, in the city of New York."

Assembly bill number 2574, entitled "An act to acquire land and property and to authorize the city of New York to maintain the Hamilton grange as a memorial building in honor of Alexander Hamilton."

Assembly bill number 2498, entitled "An act to provide for the payment of the claims of the Gamewell Fire Alarm Telegraph Company for furnishing fire alarm signal boxes and certain other materials and labor, to the village of Far Rockaway."

Assembly bill number 72, entitled "An act in relation to the construction, maintenance and operation of railroads upon Ashland place, in the borough of Brooklyn, in the city of New York."

Assembly bill number 2365, entitled "An act to provide for the payment of the claim of the Eureka fire hose company for furnishing fire hose to the village of Far Rockaway."

Assembly bill number 990 (Senate reprint 1471), entitled "An act in relation to the widening and improvement of One Hundred and Thirty-fifth street west of Saint Nicholas avenue, in the city of New York."

Assembly bill number 1325, entitled "An act for the relief of Joseph Palladino in payment for work, labor and services per-

formed and materials furnished to and for the mayor, aldermen and commonalty of the city of New York."

Assembly bill number 702, entitled "An act to amend chapter 643 of the laws of 1899, entitled 'An act in relation to the opening of the highway or avenue known as Prospect avenue in the former town of Flatbush, Kings county, now a part of the city of New York,' relative to the refunding of assessments."

Assembly bill number 853 (Senate reprint 1490), entitled "An act to amend chapter 665 of the laws of 1897, entitled 'An act to lay out and establish and construct a public drive and parkway in the city of New York as an extension of Riverside drive to the Boulevard LaFayette,' relative to the assessment of damages."

Assembly bill number 2594, entitled "An act to amend the Greater New York charter, as amended by chapter four hundred and sixty-six of the laws of nineteen hundred and one, relative to the department of docks and ferries."

Assembly bill number 2592, entitled "An act to amend the Greater New York charter as amended by chapter four hundred and sixty-six of the laws of nineteen hundred and one, relative to the police department."

Senate bill number 1411, entitled "An act to authorize the board of public improvements of the city of New York to lay out, open and construct a street, road, avenue or highway from the present easterly terminus of the Eastern parkway, in the borough of Brooklyn and city of New York and county of Kings to the westerly boundary or side of Forrest park in said city, in the county of Queens, through the lands of Cypress Hills cemetery, situate in the counties of Kings and Queens."

Senate bill number 1459, entitled "An act to authorize the comptroller of the city of New York to cancel and discharge certain taxes and interest thereon, and certain assessments and interest thereon, and certain water rates and interest thereon, levied upon the property owned by George J. Greenfield, Henry Greenfield and Elizabeth M. Greenfield, situated in the twelfth ward in the city of New York, borough of Manhattan."

Senate bill number 1412, entitled "An act in relation to the widening and improvement of Livingston street in the borough of Brooklyn, city of New York."

Senate bill number 878, entitled "An act for the relief of the Beth Israel hospital association from taxes and water rents."

Senate bill number 31, entitled "An act to exempt from taxation certain real estate leased to Saint John's Armenian Apostolic church, in the city of New York."

Senate bill number, 1268, entitled "An act to provide for the payment of the claim of M. A. Diamond executrix of the estate of John Diamond deceased, for labor and material furnished in grammar school number seventy-six in the nineteenth ward of the city of New York."

Senate bill number 1200 (Assembly reprint 2530), entitled "An act to lay out, establish, build and maintain a causeway, bridge or viaduct for use as a public street across the Jerome park reservoir, from Jerome avenue to Sedgwick avenue in the city of New York.'

Senate bill number 1439, entitled "An act ratifying the laying out and construction of Pelham avenue, from Webster avenue to Southern boulevard in the borough of the Bronx in the city of New York, and authorizing persons assessed for said work to apply to the supreme court, first department, for relief from the assessment laid therefor."

Senate bill number 1039, entitled "An act authorizing the board of estimate and apportionment of the city of New York to take proof of the claim of the Woodside Water company for compensation for water furnished to Long Island City, and to audit and allow such claim and to provide for the payment thereof."

Senate bill number 1334, entitled "An act to provide for the taxation and payment of the fees and expenses of the commissioners of estimate and assessment heretofore appointed by the supreme court in the proceedings in the city of New York for the extension and opening of Manhattan street in said city."

The following bills were not returned by the mayors of the cities affected until after the constitutional time had elapsed and therefore could not be acted on by the Governor:

Assembly bill number 2345, entitled "An act authorizing an investigation as to the expediency and cost of establishing a municipal electric lighting plant in and for the city of Syracuse."

Assembly bill number 2372, entitled "An act to provide for the construction of a new iron bridge over the Oswego canal at North Salina street in the city of Syracuse, and making an appropriation therefor."

Assembly bill number 2508, entitled "An act to amend chapter 568 of the laws of 1895, entitled 'An act to incorporate the city of Johnstown,' relative to opening, altering, extending and laying out streets."

1902. JANUARY 1. LEGISLATURE, ONE HUNDRED AND TWENTY-FIFTH SESSION.

BENJAMIN B. ODELL, Jr., Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 1, 1902.

TO THE LEGISLATURE OF THE STATE OF NEW YORK.—In accordance with the requirements of the Constitution, I have the honor to submit the following message:

FINANCIAL.

The total debt of the State on September 30, 1901, was $10,075,660, divided as follows:

Canal debt	$8,500,660
National Guard public defense debt	900,000
Adirondack Park debt	675,000

Of the above amount, $55,000 on account of the Adirondack Park is due on January 30, 1903, and $100,000 of public defense bonds on May 1, 1902, and $100,000 due on November 1, 1902, for the payment of which provision should be made by the present Legislature.

There is carried in the sinking fund for the retirement of the canal debt $1,866,526.94, leaving unprovided for $6,633,473.06.

The total amount received into the treasury during the past year, together with the balance from the previous year, was $37,834,497.43, against which there have been drawn warrants amounting to $28,045,146.27, leaving a net balance on September 30, 1901, the close of the fiscal year, of $9,789,351.16.

The new revenues derived from indirect taxation will probably make the gross income for the current fiscal year from corporations, banks and insurance companies, $6,100,000, as compared with $2,981,286.66 for the preceding fiscal year. The total receipts from all sources of indirect taxation during the coming year are estimated at $15,111,418.13.

The aggregate appropriations from 1893 down to 1901, both inclusive, were $195,399,357.82, or an average of $21,711,039.75 per annum.

This period is taken because it marks the beginning of the State care of the insane, the appropriation for which in the year 1893 was $1,346,019.64, while in 1900 it reached $5,554,891.89, and for the current year $4,506,705.30.

It is fair to assume therefore that the average annual expenditure, except with strict economy, cannot be brought below $22,000,000 per annum.

Seeking new sources of revenue should not alone be our aim, but restriction of appropriations wherever possible without detriment to the State's interests, should receive as thoughtful consideration.

A careful study of the expenditures of the past year, providing as they did for many extraordinary emergencies, leads to the belief that $20,000,000 will be ample for the coming year and will thus make possible the lowest direct tax in the history of our commonwealth. If these premises are correct, we should have the following exhibit:

We shall have from indirect taxation.....	$15,111,418 13
Leaving to be provided for.....	4,888,581 87
Of the surplus over appropriations on hand October 1, amounting to $8,200,000, there could be used.....	4,200,000 00
The only direct taxation necessary therefore would be the 13-100 of a mill provided for by the Constitution for the Sinking Fund and interest on the Canal Debt, which would produce on the present equalized valuation of the State.....	739,299 81
And would leave a surplus of.....	4,000,000 00

in the Treasury, ample enough to avoid the necessity for loans in anticipation of tax receipts. To the accomplishment of this end therefore we should direct our attention.

INSANE ASYLUMS.

Among our great items of expenditure is the maintenance of the charitable, insane and correctional institutions, and it was for the purpose of a proper presentation of this subject that they were inspected during the past summer.

There is scarcely an inmate of any of these institutions without loving friends or relatives, whose interest in his well-being is as great as our own for those whom we hold dear and who are blessed with intelligence and health. Therefore in the consideration of this question due regard should be given and careful thought bestowed upon all features of administration which have for their object the

proper medical and physical care of those whom we are called upon to protect. But this solicitude should not lead us to a profligate or wasteful policy. It is however unfortunately true that the wealth of our State has led us in the direction of undue extravagance. For the comfortable homes, such as existed in the earlier institutions, we have newly planned buildings covering much greater areas, costly in construction, and which so far as it is possible to discover accomplish no better results and but add to the burdens of the taxpayers. It may be stated here that the law now restricts the per capita cost for construction and furnishing to $550. While this is an improvement upon earlier conditions, yet it is I am convinced still too great and brings no other result than an increased expense for maintenance.

Since my visit during the past summer, plans have been adopted for additions to the hospitals at Gowanda and Rochester on more conservative lines at a reduction in the per capita cost of nearly $100, which on the number of inmates to be taken care of in these buildings will effect a saving of nearly $150,000.

The impression one gains on visiting our institutions for the insane is the duplication of administrative and executive powers so repugnant to sound business judgment. First is the Board of Managers with doubtful authority, then the Superintendent who is the executive officer over all. The State Commission in Lunacy has not the authority to remove or even correct a superintendent, a treasurer or a steward. The power therefore which they should have is lacking, and the Superintendent, protected by his Board of Managers, becomes an autocrat in the administration of his duties.

But one result can follow such a system — extravagantly managed institutions with constant demands for improvements not warranted nor justified.

Either the Commission in Lunacy is unnecessary or the local boards are a hindrance to the proper administration of this branch of the State's work. Methods more in harmony with ideas that are businesslike and a due regard for the expenditure of public money should be substituted. A central control would prevent extravagant buildings for physicians and elaborate attendance upon their wants. It would prevent excessive salaries to those high on the official staff and provide a fairer remuneration for those charged with the immediate care of the patients. A more scientific grouping of the population could be effected and many other reforms inaugurated that would in the end make a more harmonious institution than is possible under the present system. It is not necessary to elaborate, because a study of the expenses of the various institutions will lead all to the conclusion that a difference in the *per capita* cost for maintenance of $72 between the highest and the lowest is entirely too great. One central board with absolute authority could, without embarrassment and without taking from the patients a single necessary article, effect a saving from the most conservative estimate I have had of $500,000 per year on the present population.

If in addition to this, space now occupied unnecessarily for administration and other purposes were utilized at a small expense, it would be sufficient to provide for the increase in population for the next two years, and thus effect a saving of at least $400,000 more during that period. Aside from these features, I am of the opinion that the county in which the patient resides should be made a party to the proceedings before admission to any of our asylums and that notice should be served upon the attorney representing the institution in which it is sought to have him committed, who shall have power to examine into the facts, both as to the sanity and the ability of the alleged insane person or his relative to reimburse the State, and that admission to a State institution should not

be permitted until the local authorities have demonstrated to the satisfaction of the court, first that the alleged insane person should be confined, and second that he is without means of support. This would accomplish two purposes: It would prevent the admission of those who are harmlessly insane and the evading of responsibility for their care by interested parties. The burden of proof would then be transferred to the local authorities who are in possession of the circumstances and facts surrounding each case, and would prevent the present unsatisfactory *ex parte* examination.

I recommend therefore that for the Boards of Managers there be substituted a visiting board for each district, to be appointed by the Governor annually and to report to him; that the powers now vested in the present Boards of Managers be lodged in the State Commission in Lunacy, thus centralizing all authority in a commission that has been constitutionally created, which precedent has decreed must be non-partisan and which is remunerated for the services performed.[1]

STATE CHARITABLE INSTITUTIONS.

In the consideration of the charitable institutions, the same features of undesirable administration are to be seen, the same wide margin between the highest and the lowest

[1] By chap. 26 the boards of managers of State hospitals were abolished, and their powers were transferred to the Lunacy Commission. The act created boards of visitation of State hospitals, to be composed of five members who were to be appointed by the Governor, and might be removed by him. Members of such boards were to be residents of the hospital district in which the hospital for which they were appointed might be situated. A board of visitation was required to inspect monthly the hospital for which it was appointed, and to make inspections at other times when directed by the Governor.

The same act abrogated the rule requiring bimonthly meetings of the superintendents and other officers of State hospitals, and required them to meet only on the call of the Lunacy Commission.

The act of 1902 contained numerous amendatory provisions relative to the details of State hospital management.

cost of maintenance and the same unnecessary demands upon our revenues. While the Soldiers and Sailors' Home at Bath cannot be classed as a public charity, yet for the purpose of comparison it may be stated that the cost of maintenance at this institution is only $2.52 *per capita* per week as against $4.65 at the Hudson House of Refuge for Women. But it is not alone in the expenditure for maintenance that we are called upon to consider the waste of public money, but also as to the demands for improvements, which are dictated either by sentiment or ideas that are both unbusinesslike and undesirable. As illustrating this tendency towards extravagant expenditures, I mention some of the items asked for by various institutions, and which, while they may fail in one Legislature, yet are recommended year after year until finally allowed. One institution asks for a mortuary at a cost of $4,500, a railroad switch at a cost of $10,000 (inmates now perform the work and teaming), a propagating house for flowers for an idiot asylum, $3,200, a stable for officials' horses and carriages, $5,000. How many of our merchant taxpayers furnish board for the families of employees, numbers not specified, and then equip them with official carriages and horses?

Another institution asks for an appropriation of $125,000 for the purchase of a farm. Another, a cottage for its florist at a cost of $3,000. And nearly every institution is as unreasonable in its demands.

These facts are not submitted in any spirit of captious criticism, but to impress upon the Legislature that the time has come to call a halt and to demonstrate that many of our charitable asylums are not run so much for the benefit of the inmates as for the exposition of peculiar and sentimental ideas that should have no part in the management of our public institutions.

What remedy can be proposed? it may be asked. During the session of 1901 a recommendation was made for a

smaller commission for the administration of the Department of Charities. So much criticism was aroused by the suggestion that the Legislature did not adopt it. It is not my purpose to renew the recommendation at this time, but rather to ask for the existing commission greater responsibility and authority.

Our charitable institutions may be classed under the following heads:

First, Reformatories.

Second, Institutions for Feeble-Minded and Idiots.

Third, Educational.

In the first class may be enumerated the Reformatories for Women at Albion, at Hudson and at Bedford, the State Industrial School at Rochester and the House of Refuge at Randall's Island.

In the second class are the Rome Custodial Asylum, the Syracuse Home for the Feeble-Minded, the Newark Home for the Feeble-Minded and the Craig Colony for Epileptics at Sonyea.

In the third class are the Thomas Asylum, the School for the Blind at Batavia and the School for Deaf-Mutes at Malone.

In the first class the cost *per capita* per week is as follows:

House of Refuge, Randall's Island	$3 33
Industrial School, Rochester	4 15
House of Refuge for Women, Hudson	4 65
House of Refuge for Women, Albion	4 76

The difference between the highest and the lowest is $1.43 per week. This margin of difference cannot be explained in any other way than by more expensive administration, as the cost of supplies does not vary enough to account for it.

Then also we have too many reformatories for women, as the present population could almost entirely be cared for at Hudson and with greater economy.

With regard to the first class, I therefore recommend that the *per capita* cost be fixed at a fair mean, which would be $150 per year, and that a gross appropriation for maintenance be made on this basis. By this method an annual saving of $60,000 could be effected.

In the second class the *per capita* cost could be put at $140 per annum, the reduction over reformatories being made possible because of the lack of necessity for the educational features which are essential in the first class. Under the present system the weekly *per capita* cost is as follows:

Home for Feeble-Minded, Newark	$2 39
Home for Feeble-Minded, Syracuse	3 65
Custodial Asylum, Rome	3 91
Craig Colony, Sonyea	3 93

If the latter suggestion of a gross appropriation be adopted, the saving would be $97,720 annually.

Of the third class, the *per capita* cost of maintenance is not excessive, compared with that of private homes of a similar character, but the expense should be limited to the amount paid such private institutions, and care should be taken to prevent excessive appropriations for expensive buildings.

To perform this work, I recommend that the present State Board of Charities be charged with the care and administration of our charitable institutions, and that visiting committees, as suggested in relation to the hospitals for the insane, be appointed annually, and that they be empowered to visit and report to the Governor as to the conditions found; that the present Boards of Managers be abolished and the State Board of Charities be permitted to recommend, subject to the approval of the Governor, a Superintendent, either from their own number or otherwise, with a salary of $5,000 per annum, who shall have

full authority, under such regulations as may be adopted by them, subject to executive approval, over all charitable institutions.[2]

If these suggestions are adopted, a saving will be effected of at least $750,000 in the appropriations for the insane and charitable asylums. From the miscellaneous appropriations, which aggregated last year $3,512,853.09, a reduction of at least $1,000,000 more could be made, if proper consideration is shown in the treatment of demands for appropriations in special bills. The reports that I have had from the various departments, showing as they do in almost every instance lower estimates, lead me to believe that the balance of the amount necessary to effect the saving of $2,000,000 over last year's total appropriations can be found here.

I ask therefore the most careful scrutiny of all appropriation bills before their enactment. The Legislature should be not only an enacting but a vetoing body and should prevent bills carrying unnecessary items from coming to the Executive. All bills should be thoroughly considered and no appropriation made that will carry the total above the $20,000,000 limit referred to.

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2 One result of the Governor's suggestions relative to charitable institutions was the enactment of chap. 252, passed March 27, which among other things required the board of managers of each charitable institution, and of the State School for the Blind, and the Elmira Reformatory, by a majority of its members, to visit and inspect the institution for which it was appointed at least monthly, and report the result of such visitation to the Governor and the State Board of Charities.

The same act created the office of fiscal supervisor, and charged him with the duty of visiting each of the foregoing institutions twice each year, and making an examination of its affairs. He was to be appointed by the Governor and Senate, and might be removed for cause by the Governor, who might also in like manner, remove the superintendent or steward of any institution. The act contained numerous details as to the administration of the affairs of charitable institutions.

ASSIGNMENT OF JUDGES TO DISTRICTS OTHER THAN THEIR OWN.

By an amendment to the Code, Laws of 1900, Chapter 414, the Governor is empowered to make assignment of judges to districts other than their own, but this authority is rendered inoperative through the action of the Appellate Division in extending invitations to such justices without referring their request to the Governor for approval. Complaint is made that litigants are thus caused delay and additional expense.

In my opinion the necessity for the services of justices in their own districts should not rest upon their own determination. The proper remedy would be to have more justices, but this would greatly increase the expenses, already large enough. I recommend that the Governor alone be empowered, on the request of the Chief of the Appellate Division of any judicial department of the State, to make such assignments. I do this because I believe that it will protect the interests of litigants to a greater extent and will be more satisfactory than the present system.

Your attention is also called to the overcrowded condition of the calendars in the First and Second Judicial Departments, and action by the Legislature to remedy the same should be taken. Perhaps the solution of the problem might be through a constitutional amendment providing for the temporary designation of County Judges to trial terms, either within or without their own judicial department, until such calendars shall have been cleared.[3]

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[3]An amendment to the Constitution, Article 6, section 1, was adopted in 1905, authorizing the Legislature to increase the number of judges in any judicial district on a prescribed ratio of population, and also to divide the second district and erect a new district from a part thereof.

Acting on this authority the Legislature in 1906, by chap. 294, erected the ninth judicial district. The judges in office residing in the second and ninth districts were continued as judges thereof respectively.

THE FOREST PRESERVE.

Under Chapter 94 of the Laws of 1901, the various commissions having to do with the Forest, Fish and Game Departments were consolidated under one head. I became convinced after the passage of the appropriation bill carrying an item of $250,000 for the purchase of Adirondack land at the last session of the Legislature, that the amount of money necessary to carry out the scheme of ultimate purchase of the entire preserve was of too great a magnitude to be hastily sanctioned.

A bill was passed by the Legislature and approved by the Executive in 1893 which provided that agreements might be entered into between the State and owners of lands in the Adirondacks limiting the kind and size of timber to be cut, in return for which exemption from the State and county taxes upon such lands was given. The restriction was that nothing but soft wood above twelve inches in diameter should be cut. This provision has never been accepted by any considerable number of land owners. For the purpose of ascertaining the sentiment upon the subject, communication has been had with the owners of the greater part of the land in the Forest Preserve. I am convinced from such correspondence that if the law were amended to prohibit the operation of acid factories and the cutting of timber below ten inches in diameter, in return for the assumption by the State of all taxes, the ultimate object aimed at in the preservation of the forests could be accomplished without any great expense. Such land now owned by individuals consists of about 706,514 acres of forest land, 1,080,204 acres of lumbered land and 107,767 acres of denuded, burned and waste land. This property probably could not be purchased for less than $5,000,000. Under the

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Chap. 693 provided for the election of eight additional justices in the first judicial district, seven in the second district, and three in the ninth district. Chap. 694 provided for one additional judge in the fifth district, and chap. 695 for two additional judges in the eighth district.

provisions of the present law, when the State purchases the land it assumes all taxes. In addition to this, under our Constitution no public land can be lumbered.[a] If therefore all property now owned by individuals and corporations were purchased, the result would be the destruction of the lumber and wood pulp industries, which are among the most valuable we have.

The work in the Adirondacks should be pursued scientifically. Mature timber should be cut and denuded land so far as possible replanted. And if the agreement here outlined were entered into with individual owners, for restriction of lumbering and the replanting of their lands, a continuous growth and source of supply would result, without fear of condemnation or encroachment. There would be no desire to lumber without thought of the future. In addition to this, by the leasing of small camp sites a revenue and protection would result and the Adirondacks would soon be converted into a health resort and a recreation park for all who might desire to enjoy it. Suitable restrictions providing for free ingress and exit could be placed in such leases.

I recommend, first, that the present law be amended so as to permit an agreement with owners to restrict the cutting of timber down to ten inches in diameter instead of twelve and that acid factories be prohibited, and that a Constitutional amendment receive your sanction this year looking towards the scientific forestry and leasing of the State lands. These suggestions if adopted would furnish revenue for the building of roads in the forests and for other items of expenditure made necessary in the care of the Preserve, and would I am certain bring in almost all of the private lands without cost to the State.[4]

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[a] Const. 1894, art. 7, § 7.

[4] A resolution to amend the forest preserve section of the Constitution was introduced in the Senate, embodying substantially the Governor's suggestions as to cutting timber, but it was not adopted. Another proposed amendment

GOOD ROADS.

The building of good roads has continued during the past year. The general interest which has been aroused will render it necessary to continue liberal appropriations for this purpose. It is to be hoped that the time will come when all of these roads which the State is aiding in constructing may be united in common highways from one part of the commonwealth to another. It seems, however, that sufficient provision has not been made for the repair and oversight of these roads. Recommendation is made that the law which provides for their building be so amended as to give to the State Engineer supervision, not only during construction, but for all time, over all roads in which the State has so large an interest.[5]

DEATH OF THE PRESIDENT.

The untimely death of our President and the anger of our people against teachings which have no place in our form of government have suggested various methods of dealing both with the press and incendiary utterances. The freedom of the press should be preserved inviolate, because upon it depends the strength of our institutions.

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authorized the lease of forest preserve lands in lots not exceeding two acres, for maximum terms of twenty years. A similar amendment was introduced in the Assembly, which was reported favorably by the committee on public lands and forestry, embracing a provision authorizing the lease of camp sites, also a provision regulating the cutting of timber, and authorizing the construction of roads. The Assembly amendment prohibited steam railroads in the forest preserve, and by the Senate amendment street surface railroads were also included in the prohibition.

[5] This suggestion was embodied in a provision contained in chap. 53, passed February 20, amending the good roads act of 1898, chap. 115, by which local highway commissioners were required to keep improved highways "in repair, under the direction and supervision of the State Engineer and Surveyor, and such rules and regulations as he may prescribe;" and in case of a neglect to make such repairs the State Engineer might make the same at State expense, the amount of which was to be charged against the locality affected.

Any restriction which in the hands of the unscrupulous could be used for personal or partisan effect, or which might in any way interfere with the constitutional prerogative of expressing approval or disapproval, would be a serious blow to our country. The people can be safely entrusted to rebuke in the most positive manner all unreasonable attacks upon either our institutions or public men. Those whose utterances have a tendency to incite to disorder or murder should be punished. The acts of both newspapers and individuals should be directly chargeable to them, and such amendments to the laws as may be necessary to reach all offenders, either through a more expeditious trial or by broadening their scope, would seem to be warranted and justified and are recommended.

The dignity with which our people met the awful responsibility of dealing with the assassin of President McKinley and the speedy punishment meted out to him, but evidences our respect for the law. While perhaps the blow which was aimed by this anarchistic fiend against our institutions renders it imperative that our punishment for attempts at murder should be the more severe, it is difficult to see how we can reach the case except by a general amendment to the code. An attempt at murder, so far as the person making such an assault is concerned, only lacks the actual death of his victim to make his crime complete, and the punishment should therefore be dependent, not alone upon the actual effect but upon the intent. The aim of our laws is both to repress crime and to make its commission a terror to evil doers. It is apparent therefore that the violent attack upon the life of any citizen with the intent to kill should have a greater maximum penalty than is now provided. If the assassin of our late President had been called upon to face a charge for attempt to murder, the sentence could not have exceeded ten years with a commutation of about three years for good behavior. In my

opinion this maximum should be extended so as to make the law read not more than twenty-five years. This would permit the court to exercise a discretion and would be more effective than the penalty now imposed.[6]

STATE PRISONS.

The prisons throughout the State are of an old and antiquated character. Sing Sing Prison is positively dangerous both to health and in the event of a fire to the lives of the prisoners. The dividing walls between cells, taking up valuable space, should be removed and steel substituted. This could be done gradually by the work of the convicts, appropriations being made yearly for this purpose. Existing conditions should be remedied as soon as possible. New York cannot afford to maintain prisons as at present and compel prisoners to eat in their cells, which are foul and unhealthy.

The care of the insane criminals should receive consideration, because the maintenance of two such prisons, namely at Matteawan and Dannemora, should no longer be continued. The Dannemora site could be used to better advantage than for the care of insane criminals. The *per capita* expense at both of these institutions is too great and they are too elaborate for criminals. This department should be placed under the control of the State Commission in Lunacy, because it could be managed much more economically than at present. There should be no further appropriations for the hospital at Dannemora, because the difficulty in reaching it by rail renders the cost of maintenance too high. Such additions as may be needed in the future

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[6] The Legislature adopted the Governor's suggestion as to punishment for attempts to commit crime, and by chap. 116, passed March 12, amended section 686 of the Penal Code, by increasing from ten years to twenty-five years the maximum term of imprisonment for an attempt to commit a crime punishable by death or imprisonment for life.

should be made at Matteawan where facilities for transportation and ease of access make it much more desirable than Dannemora.[7]

The Napanoch prison is so situated as to make its administration most expensive and is a monument to the folly of those who designed it. No further appropriations should be made for it for the same reasons as given in the case of the Dannemora Hospital for the Insane.

LOCAL EXPENSES.

The almost total abolition of State taxes will bring home to the taxpayer the fact that his expenditures are to be peculiarly local, and if they are excessive the remedy rests with him to rebuke those who are charged with the administration of his local affairs. It has been found wise to limit by constitutional enactment the bonded debt of any municipality to ten per cent. of its assessed valuation.[b] The desire to exceed the debt limit leads to overvaluation, particularly in large municipalities, which the unfortunate property owner is powerless to correct except through the tedious delays of law. Fairness should be the basis for the imposition of all taxes, and the State Board of Tax Commissioners should enforce the provision against excessive as well as low assessments. The Legislature should amend by general law the powers of the State Board so as to make it a reviewing court to investigate and correct inequalities in the matter of assessments, and thus become not only a mediator, as between counties of the State, but also serve to protect the rights of individuals in each locality. I recommend such action.

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[7] The appropriation act, chap. 593, contained items for the support and maintenance of the Dannemora State Hospital, including the compensation of physicians and employees, and the supply bill, chap. 594, contained an appropriation for accommodations for additional patients, and for the transfer of insane convicts to this hospital.

[b] Const. 1894, art. 8, § 10.

I have learned also of excessive salary lists in various municipalities, and while perhaps it may not be proper for the Legislature to interfere, yet as in the matter of debt there should also be a safe margin to enable each local legislative body to absolutely fix and determine the percentage of total income to be so expended. In looking over the salary list of the City of New York, it will be found that there are several officials who receive a larger salary than the Governor of the State or of the Cabinet officers of the United States, and it cannot be claimed with any degree of truth that the services rendered are always commensurate with the compensation given. Mandatory legislation of this character can be justified as it would lead to the curtailment of excessive expenditures without impairment to the efficiency of the service of any municipality. In my experience I have observed that the importance of an office is judged, not so much by the people who are served as by the man who fills it, and the margin between the two is so great that it is a proper subject for your consideration. I recommend action by the Legislature which will absolutely fix a percentage based upon the total tax levy for the salary lists of all municipalities.[8]

DELAY IN APPEALS IN CAPITAL CASES.

There is evidence that too frequently appeals in capital cases are too long deferred by the failure of district attorneys to compel the appearance of the defendants' counsel. There are instances where the accused have been awaiting an appeal for long periods, and one case has come under my observation where three years had elapsed before it was noticed on the calendar of the Court of Appeals. Under the Constitution a direct appeal is taken from the Supreme Court to the Court of Appeals,[c] but so

[8] An act, chap. 435, passed April 8, amended section 56 of the New York charter, relative to salaries, by enlarging the powers previously vested in the board of estimate and apportionment, and authorizing the board to change existing salaries prior to May 1, 1902.

[c] Const. 1894, art. 6, § 9.

long as there is a disposition upon the part of the district attorneys to accede to the requests of defendants' counsel for postponement, it is impossible to force these cases to trial. And it too often occurs that in the event of a new trial being ordered by the highest court, important witnesses have died or disappeared and a criminal who should have been punished is allowed to escape through lack of evidence.

An amendment to the Code is recommended which will prevent this practice and compel the argument of such cases before the Court of Appeals within a certain time, say six months, after conviction in the Supreme Court. There is no reason why, in these days when the conveniences of stenographers and the printing press are so available, there should be such delay in the consideration of capital cases by the highest court.[9]

SOLDIERS AND SAILORS' HOME AT BATH.

The Soldiers and Sailors' Home at Bath is overcrowded. A new dormitory should be erected to provide ample sleeping accommodations for those now there. During the past two winters it has been found necessary to house some of the old soldiers in the basement of one of the buildings. We should give to these men, who risked their lives in their country's defense, ample, sufficient and comfortable accommodations.[10]

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[9] The Legislature adopted the Governor's suggestion as to the argument of appeals in capital cases, and by chap. 369, passed April 3, amended section 536 of the Code of Criminal Procedure, by adding a provision that "where the judgment appealed from is of death the appeal must be brought on for argument within six months from the taking of such appeal, unless the court, for good cause shown, shall enlarge the time for that purpose."

[10] Chap. 469, passed April 10, appropriated $81,900, for various improvements and repairs at the New York State Soldiers and Sailors' Home, including $58,000 for the construction and equipment of a "convalescent barrack."

GAME SEIZURES.

The seizure of a large amount of game in cold storage during the past summer and the possible conflict of our laws with those governing commerce between the States, brings up the question whether while aiming to preserve our game we should not also protect the innocent purchaser thereof. The provision against possession of game by an individual or a corporation after the closed season begins is proper.

But it seems that if a system of bonding for such game as may remain in possession of a dealer at the close of the open season were provided for, we should do more for its protection than by any attempt to ferret out and destroy it under conditions that are at least questionable.

I would recommend that authority be given the Forest, Fish and Game Commission to thus bond dealers and warehousemen. This would serve two purposes. It would protect those who are honest and who do not desire the destruction of their property, and it would bring about voluntary recognition of our laws. The penalties against killing out of season could then be more strictly enforced. There would be no claim made that the supply came from outside, because no one would care to run the risk of seizure and the expenses incident to the trial in attempting to establish this fact, and the duties of game protectors would thus become simpler and the laws easier of enforcement.[11]

AUDITING OF ACCOUNTS.

I believe that there should be organized in one of the departments an auditing bureau through which all ac-

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[11] By chap. 194, passed March 21, the Forest, Fish and Game law was amended by adding section 141, providing for a bond to be given by a dealer in fish or game under the circumstances suggested by the Governor, with certain prescribed conditions.

This section was sustained in People v. A. Booth & Co. (1905), 105 App. Div. 184.

counts from the various departments should pass for audit before payment is made by the Treasurer upon the warrant of the Comptroller. It would seem that the Comptroller's office would be the proper place for this work. As it is at present the University of the State of New York, the State Commission in Lunacy, and in fact almost all of the departments do their own auditing. If the bills for all supplies purchased by the various institutions, such as those under the control of the State Board of Charities and the State Commission in Lunacy, were passed upon by one department, an opportunity would be given for a comparison of prices paid for the same articles by the different institutions. As it is now such auditing in most cases is *pro forma.*

I recommend that the bills of all departments, after proper certification, shall be submitted to the Comptroller's office for approval, and that the auditor to be provided for shall have power to reject excessive charges and shall be made responsible for the proper adjustment of accounts against the State.

TAXATION OF MORTGAGES.

During the past two sessions of the Legislature measures were pending looking towards the taxation of mortgages. It was claimed that such legislation would be in the nature of a double tax and therefore inequitable and unjust. After numerous hearings the subject was dropped, and mortgages are to-day, whenever found, subject to the same tax as real estate. The result of the present condition of affairs is that mortgages in the hands of trustees are reached, while those that are in the hands of individuals, in the great majority of cases, escape taxation entirely. If real estate were taxed at its full value, it would seem that such a tax upon a mortgage upon the real estate would be but adding taxable value to the real estate equal to the amount of the mortgage. In other words, that it would be placing

a valuation upon the real estate that could not be justified by an appraisal at its true value. It is a fact, however, that real estate is not assessed at its true value and the amount of the first mortgage in the great percentage of cases is about equal to the difference between the true value and the assessed valuation. It is undoubtedly true that a system of taxation which permits discrimination against any of our citizens is unfair, and the cure of this manifest injustice should be our aim. It was proposed in the bill presented to the last Legislature that the amount of the annual tax should be five mills, and that the mortgages should be free from all other taxation. This perhaps would be excessive, but a small tax could be imposed without any very serious objection. A tax could be levied which might be known as a recording tax, to be collected by the county clerks and registrars throughout the State, of say five mills upon the mortgage recorded, and after the payment of one such tax be free from all other taxes except the transfer tax.

The total amount of mortgages annually recorded in the State is about $600,000,000. A tax of five mills upon this would amount to $3,000,000, which sum would increase the revenues from indirect taxation to an amount almost equal to the annual requirements of the State.

This small levy will satisfy those who desire to tax mortgages; it would not be a burden to those who have favored their total exemption.[12]

STATE NORMAL SCHOOLS.

An examination shows that under certain special laws affecting normal schools, some localities are benefited by having academies maintained at the expense of the State, thus defeating the object for which normal schools were originally intended. There is no reason why the expense of

[12] A bill to tax mortgages was introduced in each House, but none was passed. [See 1901, note 14, *ante*, p. 197.]

academic education in these various municipalities should not be borne locally or why the State at large should furnish financial aid to a greater degree than that now provided for by the general law for the maintenance of all high schools and academies. The normal schools were originally intended for the purpose of training teachers, but this discrimination reached such a point as to make necessary the law of 1894, Chapter 556, which provides for training schools in various institutions in which the State has no ownership, at an expense of $1 per week for each scholar. Action should be taken to restrict the attendance at normal schools to those who are intending to enter the profession as teachers.

FREE SCHOOL FUND.

It is a well-known fact that the drift of population city-ward has resulted in an increase to the cities of their proportion of the Free School Fund, and a corresponding decrease in that apportioned to the rural schools. The present distribution of this fund is therefore in an inverse proportion or relation to the actual needs of the State. I would suggest that the basis of apportionment be changed so that the moneys be distributed upon some basis recognizing the ability of the localities to maintain their own schools, or that a portion of the Free School Fund be set apart, and that the Superintendent of Public Instruction be clothed with authority to distribute it to the weaker districts of the State, having in view their local assessments and consequent ability to maintain their own school system.[13]

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[13] A revised scheme of apportionment of moneys appropriated for the support of common schools was adopted by the Legislature at this session, and included in chap. 316, passed April 2, amending the Consolidated School law of 1894, chap. 556, and also in the appropriation act, chap. 593, page 1646. Important modifications were made in existing regulations on this subject, changing the basis of apportionment, and providing for an increase of the amount to be distributed in the rural portions of the State.

ST. LOUIS EXPOSITION TO COMMEMORATE THE LOUISIANA PURCHASE.

An appropriation should be made to permit the State to make a proper representation at the St. Louis Exposition to Commemorate the Louisiana Purchase, to be held in St. Louis, Missouri, in 1903. Authority should be given also for the appointment of a State Commission to have charge of the State exhibits.

I recommend such action.[14]

THE NATIONAL GUARD.

The National Guard of the State of New York is in excellent condition and the discipline is all that could be desired. It should continue to be the policy of the State to be as liberal as is necessary for the proper maintenance of this important arm of the State's service. The estimate and recommendations are of such a character that I can commend them to your favorable consideration.

A recent decision of the Court of Appeals in the case of an officer who was virtually deposed from his rank by an order issued by my predecessor brings up an important subject for consideration by the Legislature.[d] It has always been supposed that the Commander-in-Chief had power to take such official cognizance of the acts of the National Guard and its officers as would put him in possession of the facts, and upon these findings determine what his action should be. The Court of Appeals has practically decided that the judiciary can interfere as to the findings of a court of inquiry and set aside the decision of the Governor. This will take away from the National Guard the discipline which is so necessary and essential to a wise

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[14] Chap. 421, passed April 7, authorized the Governor to appoint twelve commissioners to represent the State at the Louisiana Purchase Exposition, to be held in St. Louis, Missouri, prescribed the duties of the commission, and appropriated $100,000 for the purposes of the act.

[d] People ex rel. Smith v. Hoffman (1901), 166 N. Y. 462.

military administration. This is to be regretted, because its continuance may lead to complications and to the virtual destruction of all military discipline.

I therefore recommend that this subject receive your careful consideration, and that such amendments as may be necessary to our Military Code be adopted by the Legislature as will provide for the proper appearance of the accused before all military courts either in person or by attorney, and that the findings of such court when approved by the Commander-in-Chief shall be final.

TUBERCULOSIS HOSPITAL AUTHORIZED BY THE LEGISLATURE OF 1899.

The Commission designated by the Legislature has selected a site and work upon this important undertaking will be begun in the spring. A tender of land by the Honorable Lucius N. Littauer was received and declined because of the insufficiency of the land offered.

Perhaps no work yet undertaken by the State presents so many serious aspects as does this. It has been estimated that there are 65,000 persons in the State of New York who are afflicted with tuberculosis. It is our duty, of course, to furnish every protection possible for the health and happiness of our citizens. This departure, however, may lead to the establishment of other institutions, for which the State may be called upon to provide and for which there may be the same claim advanced as by those who are stricken by this terrible scourge.

A policy should therefore be defined. Hopeless cases should not be received, and every locality should be interested to the extent of preventing the admission of such incurables to the hospital. This can only be done when each locality is interested through the expense which it may incur in the treatment of these cases. The policy of the State therefore should be to provide accommodations and to assess upon each county the actual cost for maintaining

each patient from such locality, and it should be so enunciated by the Legislature. This would prevent the bringing into the hospital incurables and the creation thereby of an excessive tax, which could not be justified.

A proper physical certificate should be provided for and the power to designate competent physicians for this purpose in each county should be placed in the Board of Supervisors of counties or the Common Council of cities. Recommendation is hereby made for such legislation.[15]

RECEIVERSHIPS.

In a communication to the Legislature of 1901 I directed attention to the excessive fees charged for the collection of the Inheritance Transfer Tax. The Comptroller reports to me that the amendments to the law which followed my recommendation have affected a saving to the State of $25,000 in the administration of this important part of his work. This sum will be greatly increased when the law is in full operation.

Another very serious drawback to the administration of our laws is that affecting the insolvency of public or quasi-public institutions. Many instances can be cited where if the assets of such corporations had been promptly administered at the lowest possible expenditure they would have been sufficient to have repaid in full the creditors and stockholders. Particularly is this true of banks, insurance companies and railroads. The Federal statutes provide in the case of National banks that possession shall be taken by the Comptroller of the Currency and that the right to such possession shall not be dependent upon the ability of the Comptroller's department to bring about a receivership

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[15] Chap. 108, passed March 12, amended the act of 1900, chap. 416, which provided for the establishment of a tuberculosis hospital, and for the free treatment therein of indigent persons suffering from incipient pulmonary tuberculosis by prohibiting the reception or treatment of incurable cases, and requiring their return to the place of their residence. The expense of maintaining persons properly admitted to the hospital was made a charge on the county, city or town in which such persons resided.

through the action of the courts. The result has been that in many cases banks, which if otherwise administered would have paid but a small percentage to their stockholders and depositors, have been able to resume business or have gone into liquidation and distributed a percentage that has been satisfactory.

The depositors in our banks and the policyholders of the insurance companies of our State number into the hundreds of thousands. There is therefore nothing more important than that a careful watch should be exercised over these institutions. They should be placed entirely under the control of the State Banking and Insurance Departments, and our laws should be made to conform to the Federal statutes relating to National banks. I am satisfied that excessive charges have been made by attorneys in the settlement of the affairs of such insolvent corporations, and while receivers are curbed by legislative enactment as to their charges, yet their expenditures figure but very little in the total expenditures for the liquidation of such corporations. As an illustration of the abuses arising under the present system of receiverships, it may be stated that the total expenses involved in the liquidation of the affairs of seventy corporations during the past ten years have been $1,666,223.84.

I therefore recommend the amendment of the banking and insurance laws so as to provide that all proceedings affecting insurance and banking corporations under the control of the State Banking and Insurance Departments shall not only be instituted by such departments respectively, but that they shall be placed absolutely under their control during the liquidation. This would do away with the fees which are now excessive and would require the payment only by the corporation involved of the necessary expenses in the closing up of such organizations.[16]

[16] Chap. 60, passed February 26, was intended to "simplify the procedure, facilitate the settlement and reduce the expenses of receivers on dissolution of moneyed corporations."

HOME RULE FOR CITIES.

Home rule for cities formed one of the most important problems considered by the last Constitutional Convention, and a greater measure of responsibility was imposed upon municipal executives than ever before in the history of the State. They were given powers coincident with those possessed by the Governor in approving or disapproving measures passed by the Legislature which affected their particular municipalities. The responsibility therefore which was sought to be placed upon the mayors of the cities should so far as practicable be carried out by future legislative enactments. Home rule however should not be the shibboleth for the enactment of laws not in harmony with general State legislation. If by home rule is meant the greatest possible responsibility as to the administration of local affairs, the determination of questions which affect only a particular locality and the building up of local government suitable for the people, then we have not transgressed the meaning and spirit of the Constitution. If however it is sought to enact laws which are repugnant, distasteful and injurious to other portions of the State, then we have exceeded the powers that were sought to be given to localities, and home rule would become a mere excuse for the violation by legal forms of laws desired by the remainder of the State.

During the last municipal campaign in our greater city there arose a discussion with reference to local option. Local option as it relates to the liquor traffic is understood as meaning that in all communities other than cities the inhabitants thereof shall have the right to determine whether liquor shall be sold in such communities six days of the week, and upon the determination of that question the Excise Department predicates its administration. This right was given because before the enactment of the present excise law it was within the power of the voters or of the appointing authorities in the municipalities and villages to

absolutely prohibit the sale of liquor by electing or appointing a board opposed to the granting of such licenses.

While it is true that the Legislature thus delegated its powers, it never surrendered its rights to enact police regulations governing the control and sale of liquor, and the latter feature has almost the force of Constitutional enactment. Such authority as had before been given to localities was intended to be preserved by the present law. It is a well known fact that in the original draft the same rights as to local option were sought to be given the municipalities, and that they do not possess them is due to the opposition of their own representatives. There can be no objection to submitting this same question to the voters of the cities if it is so desired, as it would be treating all parts of the State alike. But if by local option is meant the right to determine whether the doors of the saloons may legally remain open on Sundays, then a different proposition is presented and a departure is proposed from the fixed rules which have governed the administration of our excise laws, and it then becomes a question which concerns not only a particular city but every section of our State. Each locality owes to all others a due regard for their rights and convictions and their moral and physical comfort. No such departure should therefore be sanctioned nor power delegated to localities touching, as this would, upon the fundamental principles which have had their growth from the foundation of our country, unless clearly desired by a majority of the people of the State. Before submitting a referendum to the cities, the whole question should be passed upon by the people at large in the same manner as were the provisions which gave the mayors the right of veto and other features of home rule now guaranteed them by the Constitution enacted in 1894.*

It would seem that the laws which we have would pre-

* Const. Art. 12, § 2.

vent the alleged abuse of the privileges accorded to the hotels, with resultant immorality, if such laws were rigidly enforced by a police honestly and efficiently administered. If however such laws are not broad enough in their scope to reach the particular evils complained of, it should be your duty by amendment to strengthen and to make more certain their proper enforcement. I am convinced that this attempt to inject into the policy of our State a question so at variance with the moral convictions of a vast majority of the people is unwise and uncalled for. Such a departure could not but be harmful to the State at large, because it would be extending to a particular line of business rights which are withheld from others. If open saloons should be authorized in cosmopolitan cities, demands would soon follow for licenses from other branches of business and might reach an extent that would arouse the consciences of every man and every woman in our commonwealth who believe not only in a day of rest but in rendering to God who has blessed us as a nation the homage that is due Him.

Blackmail can never be stopped so long as men are corrupt, but it can be lessened and almost entirely done away with if those charged with the administration of our laws follow out the principles which they are sworn to uphold. A failure in this direction renders them liable to the severest punishment, as their enforcement of the law would make possible the quiet enjoyment by all of our people of the day set apart both by secular and moral law as a day of rest and worship.

I feel therefore that no legislation should be enacted except there is more of a general demand than is apparent at present, and that under no circumstances should a referendum be permitted to municipalities until sanctioned by the entire electorate of the State.

TRAVELING EXPENSES.

A gross abuse which has arisen in all departments is the constant tendency toward allowing traveling expenses to those in the service of the State. This item amounted to $136,138.02 during the past year, and has grown to that amount from practically nothing in the year 1891. It seems to me to be excessive, and I direct your attention to it.

SAVINGS BANKS.

By the passage of the bill at the last session of the Legislature taxing the surplus of savings banks, there have been added to the revenues of the State about $700,000. The savings banks' deposits represent the accumulation of many thousands of depositors. New York has wisely safeguarded the investments for such funds but has added little to their scope. In these days when the rate of interest is growing smaller for first class securities, particularly those upon which savings banks are permitted to make loans, the returns are necessarily small, and they will probably continue to grow smaller as the long term, high rate interest bonds mature. Under the present law it is not possible for savings banks to loan upon real estate a greater value than 50 per cent. When therefore other investors are willing to lend to the extent of 60 or 70 per cent. on such valuations, they naturally lose investments which might otherwise come to them. The margin between the mortgage and the real value of property,it seems, might possibly be lessened.

Our savings institutions have been judiciously managed, but few failures have resulted and the interests of the depositors are cared for in such a way as to prevent any great loss. Whether therefore it is possible to increase the percentage upon which loans may be made with safety is a subject for your consideration. If it can be so demonstrated and if it meets with the approval of the savings

bank officials, I should cordially co-operate with and approve such legislation upon your part.[17]

It has been stated that the recently imposed tax upon the surplus of savings institutions will compel a reduction of the rate of interest to depositors from 4 to 3½ per cent. The tax imposed is less than one mill. The total deposits are about $900,000,000. The revenue amounts to about $700,000. A reduction of one-half per cent. in the interest rate would mean a reduction in the total amount of interest paid to depositors of about $4,500,000, and deducting from that the amount of tax paid to the State would leave as the net gain of the institutions through such reduction of the interest rate the sum of about $3,800,000. It will therefore be seen that the attempt to place the responsibility upon the State for the reduction of the interest rate is not borne out by this statement, provided a uniform reduction of one-half of one per cent. is made, as the depositors will receive the protection and earning value of almost $4,000,000 additional each year. Possibly it is true that the surplus of some savings banks has already been largely drawn upon for the payment of an interest rate higher than that earned. If a lower rate of interest is to be the result, it will be due to other conditions and not to the laws which seek to impose a very small tax upon the surplus of these banks. If those officials who claim that the reduction is made necessary by reason of this action were entirely fair, they would reduce the rate only by the amount made necessary by the State tax of $700,000, which on the total deposits upon which four per cent. is paid would leave the rate at 3.99 per cent.

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[17] By chap. 440, passed April 10, amending the Banking law, section 116, subd. 6, the maximum amount which might be invested by a savings bank in bonds and mortgages on unincumbered real property situated in this State was increased from fifty per cent. to sixty per cent. of the value of such property.

THE CANALS.

A recent investigation of the canal system of the State has convinced me that a definite policy as to future expenditures should be determined upon by the Legislature. The removal of the restriction as to capitalization of corporations operating boats upon the canals seems to have been an important step in the direction of an improved system. One is impressed by the fact that the canals as at present conducted are sufficient for all local business, but if they are to be as they have been in the past a restraining power upon the freight rates of the railroads, then some policy to make them more serviceable to the community should be adopted. I do not believe the people of this State would sanction the expenditure of money for the sole purpose of making of our canal system a funnel for the traffic of the far west, and however desirable it may be to give the port of New York greater statistical results, not even this would warrant such expenditure. What we desire by the building up of our internal commerce is to attract capital by offering inducements to manufacturers, thereby giving employment to our people. The most serious obstacle to the consummation of this purpose is that the canals are absolutely closed for at least five months of the year. Therefore for nearly one-half of the year manufactories are dependent upon the railroads. So long as the railroads are content to make rates which vary with the extent of trade, the shipper and the merchant are inclined to forsake the canal in favor of the road which gives the surest and most constant service.

In treating of the question of exports from the port of New York and the discrimination by the railroads against that port, we must in all fairness consider the subject not entirely as the act of a railroad corporation which is desirous of returning dividends upon its stock, but we must look at our own shortcomings and seek a remedy for the

condition of affairs at present existing. The railroads and the canals are at a parity at the beginning of the trip. Grain shipped from Duluth via the lakes to Buffalo is there elevated and loaded into cars and transported to New York or other ports, there again elevated or put alongside foreign vessels for shipment. All of this work is done by machinery, the property of the railroads, without any middlemen's profits. It is also possible when the shipment is made by railroad to issue a through bill of lading which is negotiable. Not so however with the canal traffic. At Buffalo the canal boat owner must have his boat put in its berth; he must pay the elevator charges and insurance and he must also pay the broker a price for obtaining his cargo; he must be put upon the canal with his loaded boat and then incur the expense of propulsion until he reaches New York city, where the docking facilities are inadequate and the same exactions made as at Buffalo. So that the result is that the cost to the canal boat owner is much greater than it should be, leaving him scarcely any profit. The railroads can go to Boston, Baltimore, Newport News and other ports and run their cars alongside of the wharves, obtain free storage and other facilities or discharge into the vessel without all of this intermediary work, which becomes very expensive. New York itself must act. It must make it possible for the railroads to have terminal facilities equal to those of other ports. It must make it possible for the canal boat owner to have equal consideration in the matter of dockage and other essentials. Were it not for the fact that imports follow to a great extent the line of exports, the canal improvement would deserve but very little consideration. It is this phase of the problem which makes it important that New York city should take action for the protection of its foreign commerce.

The substitution of steam for the old methods of propulsion is already an assured fact. Daily there may be seen

upon the canal boats in convoys of six, and there is no reasonable doubt that the fleets could be increased to a still greater extent. So that the first step for modernizing the canal has already been taken.

Upon a railroad the weakest points, when the question of increased tonnage or traffic is under consideration, are the bridges. So too upon the canal the first points to be strengthened should be the locks, both in the elimination of those that are unnecessary and lengthening those remaining for larger boats. In other words, in the consideration of this question due regard should be given to the possibilities of the future. From our present knowledge the ultimate and maximum enlargement could not exceed a twelve-foot canal, so that if all locks were rebuilt upon this line there would be no necessity for the consideration of that part of the problem should the expectation of those who favor a larger canal be fully met by the commerce of the future.

If the locks of the present canal were enlarged it would expedite traffic and shorten the time between Buffalo and New York. This lock enlargement, while aiming to provide for the future, would be of vast benefit at the present time.

I am informed by the State Engineer that the cost of eliminating the locks at Cohoes and Lockport and one or two other points and the lengthening of all others, with the substitution of a modern system, including a new channel between the Hudson River and Rexford Flats would be $13,694,540. The project of completing the canal to a nine-foot level might be pursued gradually, and boats built for a larger canal if lightly loaded would prove as serviceable and would necessitate no great expenditure to take advantage of the increased load which might be carried as a result of the deeper canal. This would encourage canal boat owners to immediately begin the construction of boats of greater capacity and make possible

a more complete system than at present. The cost of increasing the depth to nine feet would be $15,076,936 in addition to the amount necessary for the improvement of locks.

By the enlargement of the locks and the elimination of unnecessary ones, the total number on the main line of the canal would be reduced from 72 to 44. Under present conditions, a steamer propelling five consorts would transport to New York and return from Buffalo about 1,430 tons in 430 hours, being at the rate of about three and one-third tons per hour. With the canal completed in accordance with the Nine Million Dollar act, one steamer propelling five consorts would transport 1,800 tons in 430 hours, being about four and one-eighth tons per hour, and with a steamer propelling five consorts, carrying 3,600 tons, with the locks enlarged the time would be reduced to 400 hours for the round trip, or about nine tons per hour. So that if the plan to deepen the canals alone were adopted, the fleet capacity would be increased 370 tons, and by the additional improvement of enlarged locks the increase would be 1,800 tons for the same fleet, making the total increased load by the entire improvement 2,170 tons.

This practically would give an enlarged canal at about one-third the cost of the proposed twelve-foot canal, and would in my opinion answer all of the requirements of commerce for the present and immediate future.

It is well to understand however in the consideration of this question, that indirect taxation, except through a constitutional amendment, could not be applied to the extinguishment of the debt that would be created by such improvements. Therefore if advantage is to be taken of the increased revenues of the State, provision must be made by constitutional amendment.

I recommend therefore, first, that the proposal to enlarge the locks to one thousand ton barge capacity and to

provide a new nine-foot channel from the Hudson River to Rexford Flats be submitted to the people as a separate proposition. Second, that the canal be deepened to nine feet on such portions as are now less than that depth, and that this proposition also be submitted to the people for their approval or disapproval.[18]

The building of trolley lines along the highways has resulted in a great many of the canal bridges being used without any apparent attempt to hold responsible the companies using them, and with little regard to the strength of these structures. One of the results of such a policy was the serious accident in the city of Syracuse last year, for which a number of claims have been filed with the Court of Claims against the State. Such a policy is not businesslike and it should be your duty to correct this wrong at the present session of the Legislature.

I recommend that authority to cross the canals by means of the canal bridges be revoked, and that new permits be issued only to such companies as will guarantee, first, the strengthening of the bridges under the direction of the State Engineer and Surveyor, and secondly, that they shall assume responsibility for the safety of such bridges as well as their future repairs.[19]

Numerous bills are introduced in the Legislature each year making appropriations for the construction of new bridges across the canals, and instances are not rare where apparently sound structures have been taken down and more expensive bridges substituted for them. I am of

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[18] The consideration of this subject was continued in 1903, when an act was passed, chap. 147, which was submitted to the people and approved, providing for a barge canal at an expense not to exceed $101,000,000. [See also 1901, note 44, *ante*, p. 252.]

[19] Chap. 340, passed April 2, amending the canal law, section 25, was intended to regulate the use of canal bridges by street surface railroad companies, vesting in the superintendent of public works general supervision of the subject, and relieving the State from liability for damages, resulting from the use of the canal bridges for street railroad purposes.

the opinion that no appropriations should be made for canal bridges except upon the recommendation of the Superintendent of Public Works, and that he be given discretion to expend such appropriation wherever he may consider it necessary.

DISCRIMINATION AGAINST NEW YORK.

The claim has been made that the discrimination on the part of the railroads at present existing against the port of of New York may be obviated by State legislation, and that the port of Buffalo, instead of being the point where traffic is diverted to Boston, Philadelphia and other ports, may be made a point from which it can be directed to New York. The suggestion is made that the Board of Railroad Commissioners be given power to hear complaints, and to reduce or fix rates after public hearings, and enforce their mandates whatever they may be. This subject is an important one and I recommend it to your consideration.[20]

LABOR INTERESTS.

The repeated demands made by those interested in labor for a uniform law in relation to the employer and the employee is again presented to you with a recommendation for favorable action. While it is true that the courts have decreed and laid down rules which cover almost every possible contingency in negligence cases, yet it would be more satisfactory if these findings and such other provisions as might be considered desirable for the protection of the interests of both the employer and the employee, were enacted into law at the present session of the Legislature. A bill covering some of these points was passed at the last session which contained a provision as to the limit of

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[20] As to the power to regulate railroad rates, see the public utilities act of 1907, chap. 429, which among other things abolished the railroad commission.

time in which an action for damages could be brought, which seemed to render it undesirable and it failed for want of executive approval.[21]

The consolidation of the various labor bureaus has been in the main satisfactory. It could not be expected that such a radical change would produce in a short time the results aimed at. I am convinced however that the Department is in fair working order, and that every right, legally and morally, can be accorded to the toiler so far as it is within the powers of the present laws to do. A consideration of the disagreements which arise between the employers and employees should receive attention. It has been suggested that if labor organizations were incorporated they would be in a position to enforce agreements with employers, and themselves be amenable to the mandates of the courts. However whether this suggestion would be satisfactory or not it is impossible to tell. If a court of arbitration were created, consisting of one representative selected by the labor interest, one by the employer, the two thus selected to choose a third, giving to such board of arbitration the power to cause the attendance of witnesses, determine the questions at issue and when approved by a justice of the Supreme Court by judicial mandate compel compliance with its findings, such a law might solve the question. This is proposed to you with the hope that your investigations may lead to such action as will be satisfactory to all interests concerned.

DIVORCE LAWS.

In my last annual message I recommended a more uniform system in divorce proceedings. The State Bar Association and the Bar Association of the City of New York have taken this matter up and recommend action upon the part of the Legislature which will provide that a decree

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[21] An employer's liability act, chap. 600, was passed on the 15th of April. This act was sustained in Gmaehle v. Rosenberg (1903), 83 App. Div. 339.

nisi be entered which shall not become absolute for a period of at least six months thereafter, with the belief that many of the scandals which have arisen in the administration of our divorce laws will be thus avoided. I recommend to your favorable consideration the enactment of such a law.[22]

CORPORATIONS.

At the last session of the Legislature I recommended the liberalization of our corporation laws, believing that such policy would benefit our State and its manufacturing interests.

The wisdom of such legislation has already been proven. During the past fiscal year 511 more incorporations and 22 more corporations showing increases in their capital stock have resulted. The total capital stock of new companies and increase of capitalization by old companies amounted to $481,365,855, being an increase over the previous year of $193,524,171, upon which there have been received for incorporation $330,594.43. The largest amount at which any one company was capitalized was $17,000,000. Two companies increased their capital by $50,000,000.

While this is gratifying, I regret to say that the largest combinations are still refusing to incorporate within our State. A comparison shows that up to a capitalization of $3,000,000 our laws offer more favorable opportunities than those of other States. Beyond this however on other than manufacturing corporations the discrimination seems to be against us. I do not believe that we should make any further concessions, because it is certain that by incorporation in New York advantages are offered which are more than commensurate with the increased expense. But it is unfortunately true that foreign associations, while nominally located elsewhere, are virtually transacting all of

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22 See chap. 364, passed April 3, amending the Code of Civil Procedure, section 1774, relative to judgments in divorce cases, and also 1901, note 38, *ante*, p. 224.

their business within our borders. This is unfair, because the wealth of our people which is invested in their shares is taken out of our taxable values. New York therefore loses a proportion of taxable valuation that by right belongs to it. It is not desirable that any action should be taken by the Legislature which would embarrass or in any way hinder the administration or building up of any company, providing that it is transacting its business without detriment to the interests of our State. It seems however for the privileges which they enjoy, and without which it would be impossible to succeed, they should not be entirely free from taxation. Their share should be subject to some form of taxation, as they undoubtedly are under our present laws. The difficulty however is to reach them. If it were possible to secure lists of stockholders who are domiciled in the State, it would be easy to place such valuations upon our assessment rolls and compel the owners to pay their proportionate share of our State and municipal expenses.

While the stock of domestic corporations which pay a tax on their capital stock is not taxable under our laws in the hands of individuals, the same right should not be extended to stockholders of foreign corporations unless they shall have filed with the Secretary of State a certificate of their incorporation and have paid upon their capital stock annually a tax of say one mill per dollar up to and including a capitalization of ten million dollars and one hundred dollars per million dollars upon capitalization above that amount as a franchise tax to the State for the privilege of doing business in the State of New York and relieving their stockholders resident in this State of taxes (except the transfer tax) which would otherwise be assessed against them as individual owners of such shares. Such tax upon the stock in foreign corporations should not be subject to deduction for personal debt. The interest of the stockholder would cause him to demand of his

association the filing of an incorporation certificate in this State and would thus make certain the collection of taxes which now escape entirely.

I recommend therefore that the local assessors be given authority to compel the listing of stock holdings and that only such assessments be omitted from the total return as represent the stock of domestic and foreign corporations which have filed their certificates in this State and have become subject to the payment of the franchise tax referred to. The revenue thus derived in connection with the tax upon mortgages recommended would undoubtedly provide ample funds for the ordinary and necessary expenses of government.

It was aimed by legislation of last year to take away from manufacturing corporations incorporated under the laws of other States, unless they had at least 40 per cent. of their property within the State, the exemption which is granted to domestic corporations. That this has been a failure has been instanced by some recent incorporations filed, whereby certain companies have taken the amount of their corporate holdings in this State and incorporated under the same name and with the same officers as designated in the incorporation in other States, thereby evading the taxes which they otherwise would be liable for.

To correct this injustice should be your aim. No joint stock company should be permitted to incorporate with the same name as that borne by corporations of other States, if for no other reason than to prevent confusion, and no corporation thus formed should be allowed to merge with or to be operated by a foreign corporation unless such foreign corporation has filed its certificate with the Secretary of State.[23]

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[23] Section 24 of the Tax law as amended by L. 1902, chap. 126, and 1903, chap. 267, contains regulations concerning the assessment of shares of bank stock.

Chap. 172, passed March 17, amended section 189 of the Tax law by adding a subdivision relative to the taxation of trust companies.

BUILDING AND LOAN ASSOCIATIONS.

The legislative enactment of last year which provided for the creation of a surplus by building and loan associations, has been carried out with the result that the total surplus now reported to the Superintendent of Banks is $2,971,858.

The same recommendation for their conduct is made as for the banks; that is that the Superintendent shall have power at all times to investigate their condition and take possession of such concerns when in his judgment they may be dangerous to the interests of stockholders; also that they shall not be permitted to organize hereafter without filing with the State Superintendent of Banks a request for such organization, and shall be refused the right to transact business until such permission is granted.[24]

LEGAL HOLIDAYS.

By a recent decision of the Appellate Division of the Supreme Court it has been decided that the deferment of payments falling due upon holidays applies only to such negotiable papers as checks, notes and drafts, and does not extend to many contracts.[e] This law should therefore be amended so as to provide that in any other form of contract where payments may fall due on a legal or designated holiday the same may be deferred until the business day following.[25]

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[24] By chap. 54, passed February 20, amending the Banking law, section 5, the Superintendent of Banks was authorized to appoint a second deputy who should have special supervision of building and mutual loan corporations or associations, co-operative loan associations and mortgage loan or investment corporations.

[e] See Page v. Shainwald (1900), 52 App. Div. 349.

[25] The Governor's suggestion was adopted, and by chap. 39, passed February 20, the Statutory Construction law, section 24, was amended by including a provision that "where a contract by its terms requires the pay-

ELECTIONS.

The change from Spring to Fall elections in the towns of the State, and the law which provides for different ballots for State and town officers, has resulted in nearly every county in a great loss of votes through the failure of the electors to vote all tickets presented to them. Thousands of so-called defective ballots resulted from this cause. This is not as it should be. No one should be embarrassed or hindered by having so many tickets to examine and mark as at present. As is well known, the constitutional ballot was voted at the late election by a small proportion of the electors. The so-called defective ballots and the scratching of tickets are liable to cause serious complications at times. This is unfortunate, for the validity of a ballot must be passed upon by people who are apt to be biased one way or the other in their judgment. It would seem that a more liberal interpretation should be given as to what is to be considered a marked ballot, and also that not more than one ballot should be submitted for all candidates to be voted for by the electors.

I recommend therefore an amendment to the law which will provide for the placing of the names of all candidates upon a single ticket, and that what constitutes a marked ballot be more clearly defined.

I do not wish to be understood as advocating the repeal of any section of the law which would make it possible to identify ballots, but only a more liberal interpretation of what may be the intent of the voter who has yet to learn that to scratch the name of a candidate spoils his whole vote. This subject is one that should receive your careful consideration.

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ment of money or the performance of a condition on a public holiday, such payment may be made or condition performed on the next business day succeeding such holiday, with the same force and effect as if made or performed in accordance with the terms of the contract."

CONCLUSION.

I have aimed to present to you carefully and concisely a statement of the affairs of the State. There is no pride of opinion in the suggestions offered, but there is the hope that the results of our labor may be the enactment of laws that are for the good of the commonwealth, the upbuilding of our commerce and the transaction of the business of the State with fidelity and economy, to the end that we may merit the continued approval of the constituency we have the honor to represent.

BENJ. B. ODELL, JR.

SPECIAL MESSAGES.

January 6. To the Senate: Transmitting the annual reports of the State Inspector of Gas Meters, of the Agricultural Experiment Station, of the Adjutant General, and of the Commissioners of Pilots.

January 9. To the Assembly: Transmitting a statement of the pardons, commutations and reprieves for the year 1901.

January 21. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 21, 1902.

"In my last message I made a suggestion for your consideration in relation to the exceedingly important matter of the speedy disposition of the large trial calendar in the city of New York, which now operates as a denial of justice in many cases. It was as follows:*

'Your attention is called to the overcrowded condition of the calendars in the First and Second Judicial Departments, and action by the Legislature to remedy the same should be taken. Perhaps the solution of the problem

*Ante, p. 337.

might be through a constitutional amendment providing for the temporary designation of county judges to trial terms, either within or without their own judicial department, until such calendars have been cleared.'

My reasons for suggesting a temporary rather than a permanent addition to the working force of the Supreme Court were founded upon information leading me to believe it likely that the volume of litigation is to decrease rather than increase in the near future. That aside from actions for personal injuries, which are said to engross more than one-half of the time of the trial courts, the trial work in most of the counties of the State has diminished. Indeed it is said that actions of that character are solely responsible for the choked condition of the calendars in the great cities. Recently the parties affected have wisely manifested a disposition to agree upon the compensation to be awarded those actually wronged rather than leave it to a jury to assess the damages. Already, some important railroad interests have adopted the policy of settling at once whenever their legal advisers are able to give assurance that the claimant will probably succeed upon a trial. It is said by some who have tried the experiment, that such a policy inures to the benefit of a railroad or other corporation before a jury in the disgracefully frequent contests with fraudulent claimants, and the prediction has been made by careful and experienced men that the results promised by experiments now under way will soon lead all corporations to adopt this policy. If that prophecy be verified, our present judicial force will soon be able to do all the work there will be to do with ease. And any permanent additions to the number of judges would unnecessarily add to the public burdens and damage the quality of the judiciary, for it is the hard-working judge that becomes the best and most useful judge.

The recent and successful experiment of adding to the working force of the Court of Appeals by authorizing the

Governor to designate Supreme Court Justices to sit in that court until the calendar be reduced to 200 cases[f] (a condition that I am informed will be reached during the present year) suggested to my mind the idea of recruiting temporarily the trial force of the Supreme Court in the same way, viz: by designation by the Governor of judges from the next lower round of the judicial ladder, just as the designation of Supreme Court Judges to serve in the Court of Appeals was from the next lower round of the judicial ladder. It did not occur to me that all county judges were qualified for that work any more than it ever seemed to any one else that all Supreme Court Judges are fitted for work in the Court of Appeals, but there are some county judges in this State prepared both by education and experience to sit in the Supreme Court, just as there are some Supreme Court Judges prepared by education and training in the Appellate Division to do good work in the Court of Appeals. And it seems to me that any man whom the people of this State should honor with an election to the office of Governor, would select from the best — not from the least efficient of the county judges. The history of the past justifies such an assumption.

In case of vacancy in the Court of Appeals, the Supreme Court or other courts, the Executive appoints until the people can elect a successor. When the Appellate Divisions were created, the Governor designated which of the Supreme Court Judges should serve in these courts,[g] and whenever a vacancy occurs, upon him devolves the duty of designating a successor. The people a few years ago so amended the Constitution as to authorize the Governor to create a Second Division of the Court of Appeals[h] and the Executive upon whom that duty devolved created a court with seven members, four of whom belonged to the

[f] Const. 1894, art. 6, § 7, am. 1899.

[g] Const. 1894, art. 6, § 2; see also am. 1899, 1905.

[h] Const. 1846, art. 6 (am. 1869), § 6, as amended in 1888.

party opposed to him and three to his own party, although he might have created the court from members of his own party had his sense of duty permitted it; and quite recently an Executive re-designated a member of the Appellate Division who belonged to the opposite party when a selection could have been made which would have made a majority of the court of like political faith with himself.

Mistakes have been in the past made and will be in the future in the designation of judges, but they have been comparatively so few as to justify the confidence the people have reposed in the Governor in respect to the judiciary. And as the power to appoint judges in all cases of vacancy, and the power to designate them under certain conditions to sit in courts other than their own, has in all instances been conferred upon the Governor, it would seem to be in accord with the will of the people that the Executive should exercise that power in the event that some members of the county court bench should be temporarily assigned to duty in the trial branch of the Supreme Court.

These reasons prompted that feature of my message with which this paper opens, and it seemed to me to suggest the only avenue for temporary relief (which is quite likely to turn out to be all the relief needed).

But a still better method has been pointed out by the press, viz: that the remedy is in the hands of the jury trial judges of New York City,—that they have only to increase their working hours to cause the calendar to rapidly melt away until they shall be abreast of their work. Attention is called to the fact that the jury trial judges of the borough of Manhattan only hold court 4 1-2 hours a day for five days in a week which certainly suggests that it would not be a very severe strain upon them either mentally or physically to increase their court hours 25 per cent. until the calendar shall have been greatly reduced. So I invite your attention to this most recently proposed remedy in the hope that some way may be found to put it into effective operation, either through the voluntary action of the

judges themselves or through some plan devised by you, in the event of which it would seem wiser to substitute such plan for the one originally proposed by me.[26]

B. B. ODELL, JR.

January 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill relating to cities of the second class. The bill was passed, and became Chap. 3 on the 22d of January.

January 22. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill relating to salaries, fees and emoluments of officials, subordinates and employees of cities of the second class. The bill was passed, and became Chap. 4 on the 22d of January.

January 29. To the Legislature: Transmitting the annual financial report of the Cooper Union.

February 5. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 5, 1902.

I beg to transmit herewith a copy of a letter under date of February 3, 1902, received from the German Consul General at the City of New York, concerning the proposed visit of Prince Henry of Prussia to the City of Albany.

It would seem that official recognition of this distinguished visitor by the Executive and the Legislature of the State would be appropriate, and I respectfully suggest that a joint committee from the Senate and the Assembly

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[26] A resolution was introduced in both houses of the Legislature, proposing to amend the Constitution, article 6, section 1, by providing that whenever in any county the number of causes on the calendar of the trial term should exceed 2,000 the Governor, on the certificate of the Appellate Division, might designate not more than ten county judges to hold trial terms in such county until the number of causes on the calendar should be reduced to 2,000. The amendment was not adopted.

be appointed to act in conjunction with a similar committee which has been appointed by the Mayor of the City of Albany for this purpose.[27]

B. B. ODELL, JR."

THE LETTER.

IMPERAL GERMAN CONSULATE GENERAL,
NEW YORK, *February* 3, 1902.

EXCELLENCY.—I have the honor, in reply to your Excellency's letter of the 30th of January last, to advise you that, according to what I just learn from Washington, it is in the official program that His Royal Highness, Prince Henry of Prussia, will arrive in Albany, coming from Boston, on the 7th day of March at 8:30 A. M., and proceed to New York at 10:30 A. M., so as to stay in Albany two (2) hours.

I have the honor to be, Excellency,

Very respectfully yours,

K. BUENZ,
German Consul General.

His Excellency B. B. ODELL, JR.,
Governor of the State of New York, Albany, N. Y.

February 24. To the Assembly:

Veto of a bill entitled "An act to amend chapter 575 of the laws of 1898 by extending the time of complying with the conditions imposed by letters patent granted to one Peters."

"This bill purposes to extend to July 1, 1903, the time for complying with the terms of the condition imposed by grant of letters patent originally issued to one William T. Byrnes and now held by one William R. Peters.

This grant to Byrnes was made in the year 1885, so that for seventeen years there has been no compliance with its terms. For the reason that I did not believe that

[27] See *post*, p. 478, for note on the reception of Prince Henry.

parties should receive valuable grants from the State on condition of making improvements thereon and then neglect to comply with the terms of such grant until they saw fit and business or other reasons offered them additional inducements to do so, I vetoed a similar bill relating to the party in question last year.* I am further advised that the bill is special legislation and unnecessary and for the reason that the relief sought if proper to be granted can be obtained under the provisions of the general law.

For these reasons I do not think the bill should receive Executive approval."

The bill was not passed over the veto.

March 5. To the Assembly:

Veto of a bill entitled "An Act to change the name of 'The Ninth Baptist Church of Syracuse, New York, to 'The Lowell Avenue Baptist Church of Syracuse, New York.'"

"The purpose of this bill is to change the name of a religious corporation in the city of Syracuse. The code of civil procedure, sections 2411–2417, makes ample provision for the accomplishment of this purpose. For this reason the legislation is unnecessary.

I therefore return the bill without Executive approval."

The bill was not passed over the veto.

March 5. To the Assembly:

Veto of a bill entitled "An Act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of George R. White and John Coughlin against the State of New York for damages and extra work under a contract by the board of trustees of the New York State Soldiers' and Sailors' Home."

"The work which is the basis for the claim referred to in this bill is alleged to have been performed three or four years ago at a time before the present board of managers

* *Ante*, p. 266.

were in office, and I am informed that the contractors have presented a bill for the same which is now pending in the Comptroller's office. It has not been allowed by the Comptroller either because the approval of the officials charged with the duty of supervising such work on the part of the State can not be obtained or because the contract signed by the parties forbids it. This contract seems to fully provide for the contingencies under which this claim is presented. It provides that no claim for extra work shall be allowed unless done on the written authority of the trustees and that any alteration in the work should not be construed to extend the time for completion, but that the difference of cost occasioned thereby should be agreed on by the parties before the work was done. It was also agreed that the State should not be accountable for any loss or damage to the work or materials during the progress of the work and that the contractors should not apply to the Legislature for any compensation over and above the amount named in the contract. This being so, there would seem to be no good reason why the claim should be taken away from the official charged by law in the first instance with the duty of investigating and determining such claim and transferred to the court of claims. It must be either because they are unable to obtain the necessary approval of the State's officials or because under the contract the State is not legally liable for the claim. In neither event should the State waive its right to have the safeguards which the law has placed upon the expenditure of public money fully observed.

For these reasons the bill is returned without Executive approval."

The bill was not passed over the veto.

March 5. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the Oswego city charter. The bill was passed and became Chap. 207 on the 22d of March.

March 10. To the Senate:

Veto of a bill entitled "An Act to amend section 217 of chapter 20 of the laws of 1900, known as the forest, fish and game law, relative to the Adirondack Park."

"This bill proposes to add to the lands included within the Adirondack park so much of the town of Salisbury, in the county of Herkimer and the town of Stratford in the county of Fulton, as is included within the Jerseyfield patent, the town of Piercefield, and that portion of the middle division of Palmer's purchase which is situated in the county of Saratoga. The boundaries of the park as shown on the Adirondack tract have been the subject of careful and thoughtful consideration for years and drawn with reference solely to the interests of the State and its forestry policy. The character of the lands in the towns of Stratford and Salisbury is not such as to make them a desirable addition to the Adirondack park. They are largely cleared and improved farm lands and what forest is left has been closely lumbered. The State now owns some lands in these towns and the cost of their protection has proven very expensive to the State. They are so situated that they are peculiarly subject to the depredation of timber thieves and the State has already had serious trouble from this source.

In view of the fact that the greater part of the lands in these towns is not such as to make them a desirable addition to the Adirondack park, I am unable to see that any interests of the State would be subserved by the enactment of this bill into law, and I therefore return the same without Executive approval."

The bill was not passed over the veto.

March 10. To the Senate:

Veto of a bill entitled "An act to authorize the town of Catskill, Greene county, to purchase a machine for crushing stone, and to issue certificates of indebtedness of said town to provide for the payment therefor."

"There are two objections to the proposed legislation which seem to me sufficient to warrant the withholding of Executive approval. It does away with the requirement of section seven of the Highway law providing that before a town shall purchase such a machine it shall be authorized by a majority of votes of the electors of such town. It also substitutes for the provision of the general law that the accounts and vouchers for the purchase of stone crushers shall be presented to the town board and levied as are town audits, a provision that such town may issue certificates of indebtedness therefor, bearing interest and payable at such date or dates as may be fixed by said board. The provisions of the general law referred to are both desirable ones and a special exception for this one town does not commend itself to my judgment.

For this reason I have withheld Executive approval from this bill."

The bill was not passed over the veto.

March 10. To the Assembly:

Veto of a bill entitled "An act to amend chapter 108 of the laws of 1891, entitled, 'An act to make the office of sheriff of Erie county a salaried office in part and regulate the management of said office,' by providing for the compensation of the under-sheriff and deputy sheriffs designated by the board of supervisors of said county." [28]

"The general purpose of this bill is not commendable. While it may not directly so provide in the bill, its un-

[28] The bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 345, on the 3d of April. The

doubted effect if enacted into law would be to provide additional officials in the sheriff's office of the county of Erie and to increase the expenses incident to said office. I do not believe this is a time for such increase. It also takes away the provision for the purchase of supplies by the committee of the board of supervisors and places it in the hands of the sheriff himself. This does not seem to be a desirable change. The purchase of supplies for which the county is responsible is in most counties lodged in the hands of a committee of the board of supervisors and is not under control of the officials for whom they are furnished. I believe that by placing responsibility for the purchase of supplies and the supervision of expenditures upon the committee of the board of supervisors by whom these accounts have to be financially settled, a more economical administration is obtained than by placing such expenditures in the hands of the sheriff himself.

For these reasons the bill has not received Executive approval."

March 10. To the Assembly:

Veto of a bill entitled "An act to amend the county law relating to the office of county clerk in certain counties."

"The purpose of this bill is to afford the board of supervisors in counties in which the office of county clerk is a salaried office the right to regulate fees to be charged by such county clerks in making searches and certifying the title to and incumbrances upon real estate. Fees of county clerks for such services are now fixed by the general statute, so that by reference thereto the amount to be paid any county clerk in the State can be readily ascer-

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new bill limited the subordinates and employees which the sheriff might appoint, and like the vetoed bill omitted the provision in the existing law relative to the purchase of supplies by a committee of the board of supervisors.

tained. If this bill were to become a law different fees might be established in each county in which it is applicable subject to annual changes by the board of supervisors, and there would be no means of ascertaining the legal fees so fixed except by reference to the proceedings of the board of supervisors of such counties, while the fees as fixed by the general statute are readily determined. In my judgment the possibility of these divergent fees and their instability and the difficulty in ascertaining what they are in the different counties renders it undesirable that the bill should be signed.

For this reason I have decided to withhold Executive approval."

The bill was not passed over the veto.

March 10. To the Assembly:

Veto of a bill entitled "An act to amend the forest, fish and game law relative to the close season for woodcock."

"This bill is one of the many which annually come before the Legislature proposing changes in the game laws. These laws were codified within two years last past but already numerous amendments have largely affected the value of the codification. The season for woodcock now is not an extremely long one and I see no good reason for a further reduction in the open season for such game, and unless there is some good or special reason therefor I do not believe these frequent changes in the game laws are desirable. They lead to frequent unintentional violations of the law and tend to bring its whole administration into disrepute.

For these reasons the bill has not received Executive approval."

The bill was not passed over the veto.

March 10. To the Assembly:

Veto of a bill entitled "An act for the relief of persons, firms and corporations who rendered services and furnished labor or material which was used in constructing the state armory in the village of Tonawanda, Erie county, New York."

"Should this bill become a law it would establish a precedent for an extremely pernicious and dangerous doctrine of liability on the part of the State. In this case a contract was entered into by the State and the Rogers Construction Company for the erection of the Tonawanda armory. The Construction Company became involved and was unable to carry out the contract. The State with the money reserved finished the building and recovered the excess from the sureties on the Company's bond. Should the proposed bill become a law and the claimants succeed in establishing that the value of the work, labor and material furnished exceeded the amount the State paid for the erection of the armory it provides that such excess shall be paid to the creditors of the Construction Company. If this proposition should receive the sanction of the law it would establish a precedent which would render useless the letting of work on contract, and create the State as an insurer of the solvency of the contractor. The protection which by the contract is afforded to the State would be entirely lost, if the State was to be required to pay any excess in the value of the work and materials furnished over the price therein fixed, if the contractor fails.

Believing that it is not desirable that the State should admit such a liability, I have decided to withhold Executive approval from this bill."

The bill was not passed over the veto.

March 10. To the Assembly:

Veto of a bill entitled "An act to amend chapter 240 of the laws of 1901, entitled 'An act supplementary to chapter 115 of the laws of 1898, entitled "An Act to provide for the improvement of public highways," relative to securing the requisite right of way by the boards of supervisors of counties in which public highways are improved pursuant to said chapter,' in relation to the acquisition of material, the amount payable to claimants and the compensation of commissioners." [29]

"This bill seeks to confer upon boards of supervisors the power to acquire or the power to condemn any gravel, stone or other mineral product needed for the improvement of highways constructed pursuant to the provisions of chapter 115 of the laws of 1898 and for acquiring the right of way to such lands. This establishes a new power of condemnation not heretofore given by the statute and the exercise of which should certainly be carefully guarded. It renders possible despoilment of property, and damages to be sustained beyond the mere value of the stone, gravel or other matter taken. The ordinary rule of damages would be the difference between the value of the property previous to the removal of the material and its value thereafter. This bill provides that the measure of damages shall be the value of the material taken by the load, cord, cubic yard or other standard of measurement. This is establishing a different rule of damages and one which does not commend itself to the Executive as fair to the property owner. The power to take property by condemnation is one of the highest powers that can be exercised under our laws and one which should not be granted except public interests clearly require it and then under suitable safeguards.

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[29] The bill was not passed over the veto, but another bill on the same general subject, which regulated the acquisition of materials to be used in making roads, was passed and became a law, chap. 510, on the 10th of April.

For the reason that I do not believe that the interests of the property owner are sufficiently protected under this bill, I have decided to withhold Executive approval."

March 11. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the Lockport city charter. The bill was passed and became chap. 268 on the 28th of March.

March 11. To the Assembly:

Veto of a bill entitled "An act to amend the military code in relation to the control of armories."

"The purpose of this legislation is to allow the use of State armories by all veteran organizations of honorably discharged Union soldiers, sailors or marines or sons of veterans no matter whether of the civil war or of any subsequent war, subject to the approval of certain officers. The armories of the State are erected for military purposes and to promote the efficiency of the active forces of the State. They were erected with a view of providing suitable quarters for the active organizations in the respective localities with the prospect of their sole occupancy by such organizations. Almost without exception they are barely large enough for the national guard and naval militia now assigned to them. To authorize their use by any additional organizations would undoubtedly require further expenditures on such buildings on the part of counties or the State. As commanding officers are responsible for such property, great care is necessary to be exercised as to those who should be permitted to use the armories, especially as such officers would have no control over other than their own commands. For the reason that I believe that there are not sufficient accommodations in the State armories to allow of any further extension of their privileges, I have withheld Executive approval from the bill."

The bill was not passed over the veto.

March 17. To the Senate:

Veto of a bill entitled "An act to amend the tax law in relation to collector's notices to nonresident tax-payers of dates for receiving taxes."

"The principal change proposed by the bill in question is one making charges and expenses incurred by a collector in notifying non-residents of their taxes a town charge instead of one against the non-residents themselves. As a resident tax-payer is required to ascertain for himself the amount of his tax and the time and place for paying the same, the giving of any special notice to non-residents is a matter of favor to them and should be a charge upon them rather than an expense upon the town.

For this reason I do not believe the bill should receive Executive approval."

The bill was not passed over the veto.

March 17. To the Assembly:

Veto of a bill entitled "An act to amend the real property law relating to certain conveyances recorded prior to January 1, 1870."

"This bill provides that where conveyances of real property have been executed and attested so as to convey at the time of their execution and delivery the estate or interest intended to be conveyed, and recorded previous to January 1, 1870, in the office of the recording officer of the county where such real estate is situated, the record may be read in evidence with the same effect as if acknowledged or proved and certified so as to entitle it to be recorded under the laws in force at the time when so recorded. The recording acts have been in effect for many years and their purpose is to afford security to titles to real estate and the rights of purchasers thereof. Certain

requirements have been laid down which must be observed to entitle such deeds to be recorded and to allow them to be read in evidence in the courts of this State. Conveyances have been made based on such acts and it is unwise to vary the requirements of existing statutes, as it would undoubtedly lead to litigation and unsettlement of titles which have been determined by existing laws.

For this reason I do not believe the bill should receive Executive approval."

The bill was not passed over the veto.

March 17. To the Assembly:

Veto of a bill entitled "An act to amend chapter 348 of the laws of 1885 entitled, 'An act to authorize the appointment of stenographers to grand juries and to fix the compensation of such stenographers,' relative to the appointment for Westchester county."

"Under existing law the stenographer for the grand jury in Westchester county is appointed by the county judge on the recommendation of the district attorney. A similar provision exists as to the other counties of the State with the exception of three or four containing the largest cities. There has been nothing in connection with the administration of the criminal courts in Westchester county that justifies a change at this particular time and there are reasons which in my judgment render it undesirable. The taking away of the power of appointment from one official and lodging it in another is a change which should only be made when the public interests demand it. I am not convinced that such is the case so far as this particular instance is concerned and for that reason Executive approval is withheld."

The bill was not passed over the veto.

March 17. To the Assembly:

Veto of a bill entitled "An act to amend chapter 520 of the laws of 1893 relative to index and abstract clerks in the county clerk's office in the county of Onondaga." [30]

"Under the present law the board of supervisors of Onondaga county may upon the recommendation of the county clerk appoint two index clerks and such number of abstract clerks as they deem necessary. The amendment reverses this and provides that the clerk of said county may appoint and at pleasure remove such clerks with the consent of the board of supervisors. The proposed amendment is neither necessary nor desirable. So far as I am aware there has been nothing in connection with the present method of appointment from which it can be assumed that the change will accomplish any improvement in the administration of the clerk's office or further the interests of the people in the locality affected. The change of the power of appointment from one official to another should only be made for substantial reasons. Executive approval is therefore withheld."

March 18. To the Senate:

Veto of a bill entitled "An act to amend sections 150 and 582 of the code of civil procedure so as to enable all persons arrested or attached and held on bail on civil process to deposit money in lieu of bail."

"The amendment to section 150 of the code relates to the deposit of money instead of the giving of an undertaking for persons desiring to be admitted to jail liberties, and contains other provisions based thereon. The main objection to this section is that it provides for the deposit

[30] The bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 516, on the 10th of April, under which the power of appointment was continued in the board of supervisors, but the county clerk was given the power of removal for cause.

of the funds with the sheriff instead of having the money paid into court, as in all other cases where deposits are allowed as substitutes for bail. The amendment to section 582 provides that a defendant may, instead of giving bail, deposit with the sheriff the sum specified in the order. The proposed amendment so changes the section as to make it applicable to 'any other person arrested or attached on civil process.' Section 582 is a part of title 1 of chapter 7. This title is wholly devoted to what is known and described as 'Arrest and Bail.' The proceeding only lies against the defendant in a civil action and he can only be arrested by virtue of an order. It is evident therefore that this amendment if it has any merit should not be inserted in this article; but it does not seem to me that it is a desirable one and its purpose is not apparent. By its form it applies to all persons attached on civil process. On its face this would seem to cover an arrest of a person guilty of contempt of court and would entitle him to be released on bail without purging himself even though he were imprisoned as a punishment for such offence. The statutory provision of the code should not be rendered doubtful, and amendments which are not clearly in the interests of the better administration of the law should not be made.

For the reasons stated above the bill has not received Executive approval."

The bill was not passed over the veto.

March 18. To the Senate:

Veto of a bill entitled "An act to amend the Greater New York charter relative to notifications of assessments."

"The principle of this bill is one which does not commend itself to the Executive. It strikes out the provision of the Greater New York charter limiting the number of assistants in the bureau of the collection and assessment

of taxes to two, and leaves the number unlimited. It also increases the salaries of the notification clerk and assistant clerk from $5,500 to $10,000. I have before referred to the increases in the number of officials and their salaries in the city of New York. It has grown to an enormous extent in the last few years and become a great burden to the tax-payers of that city. This method of coming to the Legislature to authorize such increases is one which should not be encouraged, and the salaries should be reduced rather than increased.

For this reason I have decided to withhold Executive approval from the bill."

The bill was not passed over the veto.

March 18. To the Senate:

Veto of a bill entitled "An act to amend chapter 865 of the laws of 1895 entitled 'An act to provide for the establishing and maintaining of a law library for the court of general sessions of the peace for the city of New York.'"

"This bill seeks to authorize the appointment by the trustees of the library of a person as custodian at a salary of not to exceed $2,000 per annum. The library referred to has been in existence for the last seven years under the care of the trustees named in the act. It is to be presumed that it has been properly cared for in the mean time under existing law. The necessity for the appointment of a new official in connection therewith at a salary largely in excess of that received by librarians of law libraries situated in other judicial districts is not apparent to the Executive. The creation of new offices with liberal salaries does not commend itself to me and in view of the already large salary list in the city of New York it should not be further extended at this time.

For this reason the bill has not received Executive approval."

The bill was not passed over the veto.

March 18. To the Senate:

Veto of a bill entitled "An act relating to the will and codicils thereto of Catharine Louisa Power, deceased, and providing for the execution of certain provisions thereof."

"The purpose of this bill is to confer upon the public administrator of the county of New York authority to execute certain powers directed by the will of the foreign testatrix above named to be executed by her executor, now also deceased. It is claimed that the title of the premises could not be passed and that the Title Companies refused to certify it because the exemplifications of the foreign will did not contain among other certificates one of the department of foreign affairs, or of the department of justice of Ireland or of Great Britain, of facts required by sections 2703 and 2704 of the code of civil procedure. It is alleged in the petition accompanying the bill that there is no department of foreign affairs or department of justice of Ireland or of Great Britain, and for those reasons certificates could not be obtained. The policy of the State has been to confer on the surrogates' courts and the supreme court all powers which it is deemed proper to be exercised in reference to the estates of deceased persons, and powers and trusts arising thereunder; and it does not seem to the Executive that the Legislature should be called upon to confer special authority upon the public administrator for a particular case such as the one in question. I am not convinced that it is impossible to comply with the code requirements even in the case at bar.

For the reason that the powers and duties intended to be exercised through the courts should not be specially granted by the Legislature, I have withheld Executive approval from the bill in question."

The bill was not passed over the veto.

March 19. To the Assembly:

Veto of a bill entitled "An act to amend the fish and game law in relation to striped bass in the Hudson river."

"The present law prohibits the taking of striped bass from the Hudson river between April 30 and July 30. The amendment seeks to prohibit such taking from June 16 to September 15. This bill is opposed by the Forest, Fish and Game Commission as tending to throw off all restrictions as to the taking of striped bass in nets. Nets in the Hudson river are principally used prior to June 15. It is during this time that the present law is designed to furnish protection. During the period referred to in the proposed act, nets are practically not operated at all except during the first two weeks in September. For the reason that the proposed act furnishes practically no protection to the striped bass the bill is returned without approval."

The bill was not passed over the veto.

March 19. To the Assembly:

Veto of a bill entitled "An act to amend the code of criminal procedure relative to the persons who may be present during the sessions of a grand jury."

"This bill provides in substance that except in the counties of New York, Kings and Queens an attorney appointed by a justice of the supreme court upon the nomination of the district attorney to attend upon the grand jury must be allowed at all times to appear before the grand jury when it is requested for the purpose of giving information relative to any matters before it. The district attorney is a constitutional officer elected by the people.[1] While there may be occasions, such as sickness of the district attorney or his inability to attend before the grand

[1] Const. 1894, art. 10, § 1.

jury because of his engagements in the trial of criminal cases, that might render such a designation proper and necessary, yet the bill under consideration does not limit the appointment to such circumstances. The authority to appear before the grand juries is now carefully guarded and is restricted to district attorneys and their assistants or representatives of the attorney general in certain cases of public importance. Where the inability of the district attorney to appear is likely to interfere with the administration of justice the proper remedy would be for the supervisors to provide for an assistant as authorized by the county law. I doubt very much the wisdom of conferring upon the court the power to appoint, without specifying in the law itself the circumstances under which such appointments may be made, so that when made it would appear that the public interests required it. I have therefore concluded to withhold Executive approval from the bill."

The bill was not passed over the veto.

March 20. To the Assembly:

Veto of a bill entitled "An act to amend the highway law exempting Franklin and Oswego counties from the provisions relating to the rebate of highway taxes for the use of wagons with wide tires."

"At the present time the policy of the State is to encourage the building and maintenance of good roads, and it annually extends financial assistance to the various towns in the State to assist them in the construction of highways. The provisions of the act in reference to wide tires is based on the theory that the use of wagons with such tires aids in the maintenance of the highways, and the rebate of taxes to those using them is for the purpose of encouraging their use. In view of the wide spread de-

mand for the improvement of the highways, it does not seem to me that it is desirable that any of the provisions which tend to accomplish this result should be nullified.

For this reason the bill has not received Executive approval."

The bill was not passed over the veto.

March 25. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. See certificate of March 27.

March 25. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the rapid transit law. The bill was passed and became chap. 533 on April 11.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill authorizing the acquisition by the United States of lands in Erie county as a site for a marine hospital. The bill was passed and became chap. 363 on the 3d of April.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the tax law relative to the appointment of appraisers, stenographers, et cetera. The bill was passed and became chap. 496 on the 10th of April.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill providing for the erection of a monument of the late President William McKinley in the city of Buffalo, and making an appropriation therefor. The bill was passed and became chap. 536 on the 11th of April.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the Buffalo charter, in relation to the service of notices to redeem from tax sales and searches. The bill was passed and became chap. 566 on the 11th of April.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the rapid transit act and making provisions with respect to tunnel and other railroads. The bill was passed and became chap. 584 on the 14th of April.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the tenement house law. The bill was passed and became chap. 352 on the 3d of April.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the agricultural law relative to the sale of any substance in imitation of butter. The bill was passed and became chap. 385 on the 7th of April. This act was sustained in People v. Meyer (1903) 89 App. Div. 185.

March 26. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill relating to a commissioner of jurors in Kings county. The bill was passed and became a law, chap. 564, on the 11th of April.

March 26. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 24, 1902.

"The Mayor of New York City has returned Assembly bill number 1045, entitled 'An act to amend the Greater New York charter by adding a section in relation to franchises of tunnel railroad corporations, now or hereafter incorporated, for constructing and operating tunnel railroads to connect with other railroads and form thereby a continuous line between a point or points within and a point or points without the city of New York,' and with his approval thereof has forwarded a memorandum in which he recommends certain further legislation as desirable.

I deem it proper that his views should be presented to the Legislature and therefore transmit a copy of such memorandum.[31]

B. B. ODELL, JR."

The following is the Mayor's memorandum:

Memorandum in connection with Assembly bill (No. 1045), entitled "An act to amend the Greater New York charter by adding a section in relation to franchises of tunnel railroad corporations, now or hereafter incorporated, for constructing and operating tunnel railroads to connect with other railroads and form thereby a continuous line between a point or points within and a point or points without the city of New York."

This bill aims to make possible the project of the Pennsylvania Railroad Company to secure terminal facilities on the Island of Manhattan for the Pennsylvania and Long Island Railroads and incidentally to connect the boroughs of Manhattan and Queens by tunnels under the North and East Rivers with the south and west. It raises three substantial questions: First, whether it is proper to grant a perpetual franchise even under the conditions attaching to the Pennsylvania Railroad project; second, whether the bill in its present form is a safe and proper bill; third, whether it would be better, as a matter of policy, to deal with the question by an amendment of the rapid transit law.

1. As to the first question, the conditions affecting the Pennsylvania Railroad project are these: The company proposes to spend from thirty-five to fifty millions of

[31] Section 32 of the rapid transit act mentioned in the mayor's communication was amended just before the close of the session which terminated on the 27th of March. See the Governor's emergency certificate of March 26. The bill was approved, and became chap. 584 on the 14th of April. The bill returned by the mayor, Assembly No. 1045, was not approved. See the omnibus veto, *post*, p. 471, for the reasons assigned by Governor Odell for declining to approve this bill.

dollars in tunnelling the North River, in tunnelling under the surface of Manhattan Island, and in tunnelling under East River to Queens borough. The effect of this project, if consummated, would be to give the boroughs of Manhattan and Queens unbroken connection with the west and south, and to provide most desirable communication between the boroughs of Manhattan and Queens. The advantages of the plan to the city of New York are beyond estimation. The Pennsylvania Railroad proposes to provide the money for this superb enterprise, but it points out that the one indispensable condition under which it can undertake it is that it secure a franchise in perpetuity. It is clear that such a tunnel road could never be built as an independent enterprise and that it is desirable, from the railroad point of view, only as a means of connecting the Pennsylvania Railroad and the Long Island Railroad systems with the Manhattan Island and with each other.

No one in this community is more averse to a perpetual franchise than am I, but candor compels me to recognize that there is a vital distinction to be drawn between such a franchise as the Pennsylvania Railroad desires, and that, for example, of the rapid transit subway. If, at the end of the period for which the latter franchise is granted, the city decides to operate the railroad itself, the city takes the entire railroad. In the case of Pennsylvania Railroad tunnel, on the other hand, were the city to assume it at the end of a limited franchise, the city would acquire what would be of comparatively little value without the outside railroad systems connecting therewith, while the railroad would lose what would be vital to it after its business had been adjusted for fifty or seventy-five years to the use of such facilities. This is why, from the point of view of the Pennsylvania Railroad, the project is absolutely dependent upon a perpetual franchise. Except upon such a basis, the Pennsylvania Railroad is, and has been from the beginning, perfectly frank in stating that the investment will

not be made. On the other hand, the railroad asks for nothing which is of present value to the city, or which it has cost the city anything to create. The city is only asked to grant permission to tunnel under the surface of Manhattan Island and the East River.

While the bill therefore provides that a franchise may be granted in perpetuity for such a purpose, it carefully guards the right of the city to readjust the terms upon which the franchise shall be enjoyed at intervals of not more than twenty-five years. The city is thus assured of the opportunity to profit by the increase in the value of the franchise such as time may easily bring. The city is also assured of the right and opportunity to attach such conditions to the grant as public interest may require.

Under these circumstances, I am of the opinion that a perpetual franchise in such a case may properly be granted, for the city is not deprived of the opportunity to profit by its increase in value. It is only deprived of the opportunity of using the franchise itself at the expiration of a limited grant. Inasmuch as the project in contemplation involves a tunnel under the North river for its completion, which tunnel lies outside of the city's control entirely, and inasmuch as that portion of the enterprise which the city does control is so vital to the Pennsylvania Railroad Company that it cannot afford to enter upon the undertaking except upon the grant of a franchise in perpetuity, I am of the opinion that this is a case in which good judgment justifies an exception to the general rule.

In this connection it may not be amiss if I say that the provisions in the Greater New York charter of 1897, limiting the power to grant franchises to a grant for a term of years which were the basis for the provisions in the present charter, were inserted at my suggestion when a member of the first charter commission. It is also interesting to point out that the provision for a periodic opportunity for a readjustment of the terms of any of the franchises

that may be granted under section 32 of the rapid transit law, was also inserted in this section at my instance, when I was a member of the rapid transit board. It will not, therefore, be contended, I am sure, that I have ever been careless of the city's interests in these regards. The basic principle of the ground lease which I have often urged as the model for the city in its dealing with its franchises is the opportunity which such a lease affords for a periodic adjustment of the terms between the owner and the lessee. If this privilege is retained, it becomes to a certain extent a matter of discretion as to whether a franchise should be granted in perpetuity or not. I freely admit that I prefer grants for a limited period, but even so good a rule as this may sometimes suffer an exception in the public interest.

2. The second question is, whether the bill in its present form is a safe and proper bill. Different communities in the State of New York have in the past suffered so seriously from special grants that the constitution requires that every bill of this kind must be general in its terms.* It might be more satisfactory, in this particular case, to deal with the Pennsylvania Railroad project by itself, but the requirements of the constitution make necessary a law general in its terms. The bill under consideration is in form of an amendment to the charter; accordingly, any grant to be made under the terms of this bill must be made in the manner prescribed by the charter. That method of procedure is outlined in section 74 and section 48. Sec. 74 reads in part: "such ordinance shall, on its introduction and first reading, be referred by the board of aldermen to the board of estimate and apportionment," whose duty it is to inquire into the value of the franchise and to indicate the terms upon which it would approve the proposed grant. According to section 48, when such a proposed franchise "has been approved by a resolution or

* See Const. 1894, art. 3, § 18, exclusive franchise.

vote of the board of estimate and apportionment, it shall be the duty of the board of aldermen, upon receiving a copy of such resolution or vote, to appoint a day, not less than one week nor more than two weeks after receipt thereof, for the consideration of the subject matter." If within six weeks a majority of the board do not vote against such a proposition or franchise, then it shall be deemed at the expiration of said period to have been passed by the requisite vote of the board of aldermen. The Greater New York Charter, therefore, provides in effect for the determination of the terms of the franchise by the board of estimate and apportionment. It also provides for adequate public knowledge, and makes provision against an indefinite delay as to determination of the question. So much for the charter method of procedure. It will be generally admitted that it affords to the city such security as the character and ability of its public officials can ensure, under a deliberate system of procedure which gives public opinion ample opportunity for making itself felt.

It has been urged that this bill, being general in character, offers the opportunity to the city authorities to advance other schemes less meritorious than that of the Pennsylvania Railroad. To this it may be said that the number of such schemes must be very limited from the nature of things. The bill gives authority to grant to railroads originating outside of the city only the right to tunnel under the surface of the city, with right of access at stations, and the right to have the road emerge to the surface only at termini which must be on private property. If a tunnel is to reach Manhattan Island from beyond the city limits, and if it comes from the westward the enterprise must begin by tunneling the Hudson river; if it comes from the eastward the tunnel must begin to the eastward of Jamaica; if it comes from the north the tunnel must begin at Yonkers or Mount Vernon. Such enterprises, as

has been pointed out, must be few in number in the nature of things. They must be constructed solely with private funds; they are not exempt from taxation; and they cannot hope to compete for local business on even terms with the Subway Company in which the city is interested. The Pennsylvania Railroad project is not advanced as a measure of local rapid transit. It is made possible only because it furnishes the connecting link between two friendly railroad systems, neither of which, at the present time, reaches the borough of Manhattan. It is conceivable that conditions sufficiently exceptional to lead to another enterprise of the same sort may arise at some time in the future, but it is not easy to see how any great public injury can befall the city under the terms of the pending bill. Those who argue from their fears as to this aspect of the matter virtually assume that the only protection for the city in such matters is to deprive the city authorities of the power to act in the public interest. There is another agency, besides the written law, capable of protecting the city from the misuse of power in such matters, and that is public opinion. No one will dispute the fact that public opinion on the subject of the grant of franchises is more alert than it has ever been before. I am not willing to assume that legislation ought to be shaped upon the theory that neither the character of city officials nor the public opinion of the citizens can be trusted to protect the interest of the city in matters of vital importance.

3. It has, however, been suggested, at the last moment, that it may be better, as a matter of policy, to deal with all such projects as are contemplated by the pending bill through an amendment of the rapid transit act. Section 32 of this act gives to the Rapid Transit Commission powers so nearly similar to those conferred by the pending bill as probably to enable the commission to authorize the desired work to be done if it were conducted under the name of the Long Island Railroad Company. Under these circum-

stances it is contended that the adoption of this amendment to the charter will result in creating two separate agencies capable of dealing with this question. It is pointed out therefore, that the development of the underground railroad system of the city is much less likely to be symmetrical and comprehensive, if brought about by two different methods of procedure, than it will be if every such plan is passed upon, as most plans have to be, by the Rapid Transit Commission. It has also been urged with great earnestness that under the pending bill action might be taken which would seriously injure the city's interest in the subway now being constructed at the city's expense. These considerations seem to me to have so much weight that they demand recognition at my hands, although I am conscious that in yielding to them I am giving effect to a conception of the duty of the Rapid Transit Commission which will be new to many citizens of New York. One has to deal with facts, however, rather than with theories, and it seems to me upon the whole quite as important that the shaping of the underground railroad system of the city shall be subject to the supervision of a single body as that the laying of the water pipes should be.

On the other hand, the proposed improvement to the Pennsylvania Railroad is too important to the city of New York to justify any course of action at this stage of the legislative session which might conceivably result in lodging power nowhere to deal with this proposition.

Under all the circumstances, therefore, and in view of the near approach of the end of the legislative session of the year, I have determined to approve the pending bill, and at the same time to forward a letter to the Governor, asking him to send to the Legislature with an emergency message either a bill amending section 32 of the rapid transit act in the comparatively slight particulars which are necessary in order to give to the Rapid Transit Commission jurisdiction in the premises; or else a bill amend-

ing the measure now under consideration by providing that the route and method of construction of any proposed tunnel railroad shall be examined and approved by the Rapid Transit Commission; or at his discretion, both of these measures so that the Legislature may consider both. I have reason to believe that the Pennsylvania Railroad will not at all object to the supervision of the Rapid Transit Commission of the project now in contemplation.

It will be remembered that the mayor and comptroller of the city are ex officio members of the Rapid Transit Commission, and that every franchise approved by the commission must be accepted by the board of aldermen and the mayor before it can go into effect. The question at issue, therefore, is not whether the city authorities shall or shall not be called upon to approve any given project, but whether or not the Rapid Transit Commission shall be called into consultation. In view of the large sum which the city has already invested in the subway, and in view of the still larger investments that the city is likely to make in this direction in the years to come, I should conceive that it is on the whole desirable that the initiative in such matters shall be taken by the Rapid Transit Commission at least so far as the route and manner of construction are concerned.

(Signed) SETH LOW,
Mayor.

March 27. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill providing ways and means for the support of government. The bill was passed and became chap. 615 on the 16th of April.

March 27. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. The bill was passed and became chap. 594 on the 15th of April.

March 27. To the Legislature: Certifying to the necessity of the immediate passage of the supplemental supply

bill. The bill was passed and became chap. 595 on the 15th of April.

March 27. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the highway law relative to county supervision of highways. The bill was passed and became chap. 396 on the 7th of April.

March 27. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill relative to the assignment of supreme court justices to service in other districts. The bill was passed and became chap. 484 on the 10th of April.

March 27. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

February 18.

Memorandum filed with approved Assembly bill, chap. 26, amending the Insanity Law.

"Under the existing law the boards of managers have the power of general supervision over their respective hospitals, the establishment of by-laws and regulations necessary and expedient for regulating the appointment and duties of officers and maintaining an effective inspection, for which purpose they are called upon to visit the hospitals at least once in every three months. They also possess the sole power of appointment and removal of the superintendent and treasurer, and through the former of all the officers and employees.

This bill seeks to transfer these powers to the State Commission in Lunacy, to abolish the boards of managers and to substitute therefor boards of visitation residing in the respective hospital districts, thus completing the cen-

tralization in the State Commission in Lunacy of all of the powers and responsibilities incident to the management and care of the dependent insane of the State.

It may be well to state that under this proposed law the Superintendent must possess all of the qualifications exacted under existing statutes subject to the civil service regulations, and that a provision is made for the superintendence of homeopathic hospitals by homeopathic physicians so that there shall be no interruption or interference with this school of medicine in the treatment of the insane. It is also a fact, and this should be clearly understood, that the bill under consideration proposes to retain all of the officials now in office except in one instance and to guard them in the performance of their duties against removal except for cause after charges have been preferred, the decision to be subject to review by the courts. It will be thus seen that every provision that is necessary for a business like and humanitarian administration of this department seems to be properly provided for.

There remain for consideration only these points: whether this change is for the best interest of the State and whether or not the proposed law is constitutional.

As to the constitutional features of the bill: Section 15 of article VIII of the Constitution specifically states: "That the Legislature may confer upon the commission and upon the board mentioned in the foregoing section any additional powers that are not inconsistent with other provisions of the Constitution." In an opinion from the Attorney-General I am informed that there is nothing inconsistent with the Constitution in the duties sought to be imposed upon the Commission in Lunacy by the bill under consideration. Relying upon this advice I dismiss this objection from further consideration.

The bill is not an attack upon individuals but rather upon the system and has resulted from a desire to prevent in the future what has occurred in the past and to permit

intelligent, prudent and careful oversight by a commission that can be held absolutely responsible, that can enforce its mandates without interference or hindrance, which is solely responsible and actuated by a desire to make our insane hospitals all that they should be.

That there remains under existing law something of the old system, something of a localized character in the administration of these institutions is apparent to any one who may investigate them. Friction exists between the State Commission in Lunacy and some of the local boards. Suggestions made by the Commission may be favorably received in one hospital and totally disregarded in another. The same tendency towards extravagance in buildings is as manifest to-day as under the old system and constant demands for what seem to be totally unnecessary adjuncts to these institutions, entailing large expenditures, seem to meet with the approval of the boards of managers. Buildings for nurses are provided for at a cost of less than $300 *per capita,* while the expenditure of the maximum limit of $500 *per capita* allowed by law is used up in nearly every instance in the construction of buildings for the insane patients.

Buildings have been erected in connection with the Manhattan and Long Island hospitals at a cost which is but a small percentage of the present construction at other institutions and which are fully as comfortable and suitable for the purpose as those of a more expensive design. This fact I am constrained to believe has caused the proposed reduction in the limit of cost of construction from $550 to $450 *per capita,* which will effect an annual saving of about $70,000.

Some of the results of the investigation made last summer are as follows:

Hospitals are equipped with expensive labor-saving machinery, such as expensive laundry machines, to perform work in the most expeditious manner. Manufacturing ma-

chinery is used to produce the best operative results, but this deprives the patients of manual employment to a large extent, thus necessitating, while saving in the direction of labor, the construction of expensive buildings for amusement halls, some of which would rival the handsomest structures found in many of our cities of the second and third class. Refrigerating plants to produce ice at a cost of from $1.25 to $1.50 a ton, with an outlay for machinery of many thousand dollars, are to be found in many of these institutions, when the natural ice could be harvested and stored at an expense of from twenty to twenty-five cents per ton, giving employment also to many of the patients, which would at least occupy part of their time and keep their minds diverted from their own condition. Expensive foundations with elaborate roofs for covering one and two story buildings are found in many places, and when the suggestion was made that an extra story would result in economy in construction and in maintenance it was vigorously and energetically combated, not because the construction of one and two stories was any better, but because it would be out of harmony with the general plan that had been adopted in recent years. Against this opposition it was finally decided to build the additional wings two stories instead of one and two, which resulted in a saving of about $150,000 in the two institutions affected, namely, Gowanda and Rochester.

All of the economies that have resulted in recent years have been the result of investigations, of insistence by the Lunacy Commission and by the Legislature, which has gradually taken away from the boards of managers the functions they theretofore possessed, and scarcely one of them has ever emanated from such a board.

I am informed that there is nothing more important than the regulation and adjustment of the population in the hospitals. Yet within three or four months the Commission in Lunacy, in accordance with the statute, requested the at-

tendance of a board of managers to discuss this very important feature, and but one member of that board appeared.

What feature of administration is threatened by this act? Are the insane to be any less certain of inspection, and is the protection of their rights endangered under this proposed law? Will the increased power lodged in the Lunacy Commission operate to the disadvantage of the system? I believe that the answer to these queries should be in the negative for the following reasons, and my conclusions have been arrived at only after a careful study of existing conditions, of the recommendations of my predecessors, of what has occurred in other States, and of the results accomplished in our own Commonwealth, by depriving the local boards of managers of the powers they formerly possessed. While it is true that a more efficient administration has prevailed during the past few years, there is no guarantee that these conditions will always continue. No department of government should have more earnest consideration than this which controls a population of over 23,000. It is vitally important that nothing should be done to mar in any way the efficiency of administration, and I should not hesitate to withhold my signature from this bill were I convinced that such a result would follow. But it is a fact that all of the scandals and all of the extravagance which have marked the administration of this branch of the State government have resulted from the administration by local boards, while on the contrary, no Governor, no matter what his political affiliations may have been, has sought to build up at the expense of the State charitable institutions a personal or political following. Therefore I would rather trust a system that has never been found wanting than one which has been almost constantly under suspicion.

That this subject is not a new one is shown by a few excerpts from the messages of some of those who have preceded me in the gubernatorial office.

Governor Cleveland, speaking of the local boards of trustees, says:* "The local boards of trustees gratuitously perform the duties they have assumed, and while not unfaithful can hardly be expected to devote time very constantly to the details of management. They very naturally gain much of their information from the statement of the superintendent in charge. * * * I cannot but believe that much that is defective and expensive in the present management of these institutions is attributable to the divided responsibility and consequently loose and unbusiness like methods." Contrasting with the centralized control in the State prison department he says: "There seems to be no good reason why similarly favorable results cannot be obtained by the application of a like system to the control and management of the business affairs of our charitable institutions. It accords with the plan adopted where large private interests are involved; it has the advantage of concentrated responsibility."

Governor Flower says:† "The trouble with the old system has been that the local managers have been inclined to leave responsibilities of this sort to the officers of the institutions, and by reason of this neglect grave abuses and scandals have occurred. There is no guarantee that this might not occur in the future. Where responsibility is diffused, the risk of neglect—of mal-administration—is greater."

Governor Hill says, speaking of the State Board of Charities:‡ "This is an appropriate time for the adoption of a new system. The expenses of our charitable institutions are annually increasing with astounding rapidity, and these institutions need the constant watchful care of an alert and energetic official whose time and talents can be devoted wholly to the State."

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* *Ante*, vol. 7, pp. 960, 962, 964.

† *Ante*, vol. 9, p. 315.

‡ *Ante*, vol. 8, p. 173.

Governor Black says:* "A pauper is not, because of his insanity, entitled to extravagant fare or gorgeous surroundings. The large majority of farmers and mechanics live in the humblest way and contribute by tax to the support of the State institutions. Justice to them will not permit, and humanity to the insane does not require, that lavish and ill-considered outlay which characterizes the quarters holding some of the State's insane."

Let us see what it was that actuated the references just quoted, why such strictures were made upon the local management of these institutions. There can be no stronger arraignment than that of Mr. Apgar, who in 1879, reported that the *per capita* cost for construction of the bare buildings at the Hudson River Hospital was $3,324 against an average *per capita* cost for private dwellings in Dutchess county of $396.92; that the *per capita* cost of the buildings at the Middletown Hospital was $2,180, while the *per capita* cost of private dwellings in Orange county was $377.90. Notwithstanding this arraignment, it was subsequent to this time that the expensive buildings of the St. Lawrence Hospital were erected which cost something like $1,410 *per capita,* and the buildings of the Buffalo Hospital which cost $1,256 *per capita.* A comparison with private dwellings in the counties of Erie and St. Lawrence would undoubtedly show the same startling disparity. Mr. Apgar then adds: "To appreciate the stupendous folly of the expenditure of public money it may be mentioned that the cost of the ten most expensive hotels in America would probably not exceed $1,500 a guest."

The claim was made then as now that the State could afford to expend a greater sum and thus effect speedy cures, but the fallacy of this contention is shown by a reference made by Mr. Apgar to a report of a legislative investigation in Massachusetts, where it is shown that any patient who could be cured at any one of these expensive

* *Ante,* vol. 9, p. 831.

institutions could also have been cured at one of a smaller cost. Speaking of boards of managers he says "that they are actuated for good and are anxious to produce the best results, but they have only to consider the one institution under their care, and this is apt to produce a liberal scale of expenditure which more direct supervision is needed to counteract and restrain."

This same investigation showed that superintendents were receiving salaries from $10,219 down to $7,978, with substantially everything provided except clothing, while the tenure of office was certain.

It was at this time that the Binghamton Hospital authorities were cited before the Senate and came within one vote of impeachment. In 1894 the superintendent of the Middletown asylum was called before Governor Flower and his resignation demanded, but he was protected by his board of managers, who prevailed upon the Governor to withdraw his request for his resignation.

An investigation at the Hudson River Hospital showed among other things a decrepit superintendent who was anxious to resign but was prevented from so doing by the board of managers, and that during this term a contract was made for meat at an expense of two and a half cents per pound more than the market rate, at a loss to the State of over $75,000. Upon his retirement, which was finally procured, the new superintendent found ample accommodations for 300 additional patients, which resulted in a saving of at least $150,000 for new buildings.

At the Long Island Hospital a contract for coal was given in 1896 to a member of a coal ring and the coal was of such poor quality that the State Commission in Lunacy interfered, and after a great effort secured the annulment of the contract. In order to transport the coal to the asylum a small railroad owned by a former member of the State Senate was in use, and was offered to the board of managers for a small sum. The offer was refused and an

expensive canal built in 1897 at a cost of $35,000, which was abandoned within a short time after its completion. A spur of the Long Island Railroad was then substituted, and it has been stated that one of the board of managers at that time was a subcontractor upon this work.

At Utica, between 1866 and 1889 $600,000 was expended for improvements, betterments and additions with an increase in capacity of but sixty beds; in other words a cost of $10,000 per bed.

At the Willard asylum a farm was bought from one of the members of the board of managers at a price greatly in excess of its market value.

The treasurer of the Gowanda State Hospital informed the State Commission in Lunacy only a few years ago that he received his appointment only upon stipulating to divide his salary with a member of the board of managers. This accusation has never been denied. The managers of the Gowanda Hospital entered into a contract with a local architect, as did also the Buffalo Hospital authorities, to pay 5 per cent. up to a capacity of 1,500 upon all construction; and it will be necessary to pay the local architect $10,000 for work upon the two wings at Gowanda just contracted for, notwithstanding the fact that the State has a fully equipped architect's office capable of performing this work.

One of the first acts of the managers of the Long Island Hospital was to attempt to award a contract for construction to the second or third highest bidder, which was only prevented by the intervention of the State Commission in Lunacy.

Expensive quarters costing $2,400 a year are maintained for the Manhattan Hospital in the city of New York when their proper place of meeting should be in the hospital itself, as they certainly cannot inspect an institution so remotely situated from the hospital offices in New York city. At this same institution $60,000 was spent in unauthorized

purchases through a fraudulent system of vouchers which was so palpable that any office boy should have detected it, but which was not discovered through the neglect of the Superintendent to make even an occasional comparison of vouchers with invoices. Seven thousand dollars of the above amount have never been accounted for. Against the protest of the State Commission in Lunacy this board re-elected the very Superintendent who was responsible for this large loss to the State, and he is now holding office.

During the administration of Governor Flower it was shown that the most elaborate fare was provided for the boards of managers upon their visits; that a bill for wine amounting to $1,000 was audited by the managers, and that strawberries at $1 per quart, and that brook trout at $1 per pound were purchased for their entertainment.

After returning from the investigation of the institutions last summer the State Architect was requested to furnish a detailed report concerning space in the State hospitals which could be utilized for dormitories and he reported that something like 1,300 patients could be provided for if the present quarters were more systematically arranged and less space given to the officials of the institution. This when capitalized means at present an expenditure of $600,000 of the State's money for the entertainment of their employees.

These are matters of fact and history and cannot be controverted. The evidence in nearly every instance is on file with the State Commission in Lunacy where it can be seen by any one who cares to investigate it. But it is claimed that these conditions do not prevail to-day. Happily they do not to the same extent, although some of the incidents cited above have occurred within the last three or four years.

I am satisfied that a great majority of the members of these boards are entirely ignorant of these abuses, but yet they are open to criticism for failure to perform the duty of visitation with which they are charged under the statute.

There are other abuses equally as flagrant as those which I have cited to which attention could be directed, but these I think will suffice to show that the triple management which is now in existence should be abolished and the simpler one of direct control substituted therefor. Let us see some of the practical results which have followed these numerous investigations that I have recited. In the first place subsequent to 1890 the *per capita* cost of construction has been reduced to $500; that of itself has saved thousands of dollars to the State. The cost of maintenance at the Utica Asylum in 1889 was $5.05; in 1901, $3 per week. At the Hudson River Hospital in 1889, $5.28; in 1890, $5.58; in 1901, $3.48. At the Buffalo Hospital in 1890, $4.72; and in 1901, $3.08. At the Middletown Hospital in 1890, $6.03; and in 1901, $3.39. For Rochester in 1892, $4.29; in 1901, $3.89. At the St. Lawrence Hospital, $5.20 in 1893; $3.31 in 1901. It is impossible to give comparative figures for the Willard and Binghamton Hospitals, because in the earlier years these hospitals were used simply for chronic cases, no acute cases being taken, but they do not differ materially from the present *per capita* cost.

Are not these figures sufficient reasons for more centralized control? Is not the saving which has been effected in this matter of maintenance enough to justify absolute control by the board which has accomplished these partial results? But here is another matter that must be considered and that is the humanitarian phase. It is claimed that no one can be found who will consent to accept an appointment as a visitor to these asylums, and therefore that a supervision which the boards of managers have exercised will be totally lacking. I do not believe this, but am confident that charitable people will be found who will gladly undertake this work. But have the members of the boards inspected as provided by the statutes? The visitation books answer this question and show as follows:

At Utica an average for each member of the board of managers of 18 visits a year; at Willard 3 to each manager; at the Hudson River Hospital, 6 to each manager; at the Middletown Hospital, 4; at the Buffalo Hospital, 1 for each manager; at the Binghamton Hospital there is no record since 1897; the St. Lawrence Hospital shows 1 visit per manager; the Rochester Hospital shows an average of 2 visits for each manager; the Long Island Hospital shows an average of 2 visits each year for each manager; the hospital at Flatbush received 1 visit for each manager. There are no entries in the visiting book of the Manhattan Hospital at any of its branches back of 1898. It is but fair to state however that there were frequent visits to the office of the hospital in New York. So that from the humanitarian standpoint nothing extraordinary has been accomplished by the boards in visiting the institutions and inspecting the wards of the hospitals and the condition of the patients. They have been obliged to rely upon the reports of the Superintendent in charge, which might or might not be accurate, and which formed the basis for the more or less correct report to the State Commission in Lunacy.

Now what does the present bill propose to do to correct this condition? It proposes to substitute for a triple management one having absolute and entire control. Under that plan absolute responsibility can be placed upon the Superintendent of each institution, rendering any evasion by him impossible. Acting for the Governor is the board of visitors for each hospital, who are charged with the duty of visiting their institutions once every month and reporting directly to the Governor and to the Commission in Lunacy, thus becoming not only a medium for report to the Governor of the acts of the superintendents and the condition of the hospitals, but also to act as a check upon the Commission in Lunacy that it may not transgress its powers and render inoperative the many

wise provisions for the proper government of the hospitals for the insane. Each of these hospitals would then lose its local character and become a State institution in fact as well as in name. It would then be possible to have some general plan adopted, so that we would not have as at Poughkeepsie what is known as the cottage plan with its attendant expenses or separate heating plants, kitchens and attendants. We would be able to take advantage of the most economical and useful features and inaugurate systems which produced the best results, and group the patients scientifically without hindrance so that there might be an entire separation of those who need watchful care from those who do not.

Because of the facts above recited, as well as the knowledge that partial control by the Commission in Lunacy has already brought about a reduction in expenses, improvement in administration and a betterment of the condition of the patients; because also I believe that the Governor should always be in touch with the various departments of the State and be advised from time to time of their necessities and condition, and because I am convinced that improved administration can only come through centralized control and supervision, I believe this bill should become a law.

I have come to this conclusion, to this determination, with respect and admiration for those who have so vigorously contested this measure, because I believe they have been actuated by honest and sincere motives, but they doubtless have been moved by fears which time will prove to be groundless. Relying upon the record of the past for the fulfillment of the promise in the future, with no foreboding as to the result, with a consciousness of right, with thanks to the Legislature which has permitted me to join with it in an approval of a measure which my convictions lead me to believe to be wise and which I am convinced is for the best interests of the State and its unfortunate wards, I am led to approve the bill."

March 21.

Memorandum filed with approved Senate bill, chap. 195, political enrollment.

"Honest primaries are as essential as honest elections in our system of party government. They are the foundation on which is erected the superstructure of the party machinery. In the larger cities a system of primary enrollment has prevailed for some years past and aids in securing a fair expression of the desires of the members of various political parties. Heretofore there have been no provisions for any enrollment of members of political parties in the towns and villages of the State under 5,000, and it is claimed that in certain localities, particularly in the neighborhood of the large cities, the lack of any method of identifying the members of the various parties had led to fraudulent and false voting at the primaries in such towns. Last year a bill was presented providing for a method of town enrollment in the county of Monroe, which failed of approval. The present bill differs from that one in at least three important reasons:

1. It is a general bill. While many counties appear to have been excepted from its provisions, it may still become applicable to a considerable number of others, among which are several of the largest and most important.

2. It is not compulsory but cannot become applicable to any party in any county until the duly elected general committee of the party in the county declares by resolution, in which a majority of the town members must concur, that it desires its members enrolled under the plan proposed by this bill.

3. If the plan proves unsuccessful or for any other reason unsatisfactory, the action of the general committee may be similarly rescinded and the plan abandoned. The plan proposed appears to be inexpensive and possesses, as now proposed, some features which entitle it to a trial.

If it proves successful, it will undoubtedly be of much benefit; if it does not, it can do little harm, since its continuance in operation in any county will depend upon the favor it receives when tried.

While I entertain doubt as to the wisdom of some of its provisions, yet its advocates are strenuous in their claim that it will materially help in preserving the purity of primaries. Desiring to aid as far as possible in all legislation that will tend to improve the conditions surrounding primary elections, believing that the provision last mentioned safeguards the execution of the law, and in the hope that it will justify what its supporters claim for it, the bill has received Executive approval."

THIRTY-DAY BILLS.

March 28.

Memorandum filed with approved Senate bill, chap. 268, to amend the Lockport city charter.

"This bill has been accepted by the common council of the city of Lockport and disapproved by the mayor but repassed by the Legislature. At the hearing upon this bill it was disclosed that the opposition was due to the fact that action of the water board was not made necessary in the selection of or the planning for the new and necessary water supply and that the initiative for such plans and propositions looking to the procuring of this new water supply instead of resting with the water board was placed entirely with the common council. If the common council had the sole right to act without the referendum provided for to the people, there might be danger in this contention. But it seems to me that inasmuch as the ultimate decision must rest with the people themselves, the results which the opponents of the bill fear through its operation will be found to be without foundation. While it is unfortunate that differences

should exist between the mayor and the common council as to this measure, I am convinced that the urgent necessity for a new water supply, which is conceded by both parties, should outweigh the objections, leaving to a future Legislature if it should be desired the matter of such corrections in the law as will satisfy all, without danger of delay to such an important matter.

For this reason I have concluded to sign the bill."

March 29.

Memorandum filed with approved Senate bill, chap. 270, to amend the Civil Service Law.

"At a hearing held before me upon this bill the contention was made by the opposition to the measure that it would practically nullify the civil service laws and that an incompetent person would be secure in his position and thus injure the civil service of the State and of the municipalities. This objection does not seem to me to be well founded, because the civil service rules do provide for the dismissal of an incompetent person throwing only the burden of proof upon the person preferring the charges. While it may seem difficult to accomplish a removal under such conditions, yet the fact remains that the power to remove for incompetency or misconduct does exist and no great harm can therefore come to the service by the enactment of this law.

It would be unwise perhaps to extend this same provision concerning a probationary period to all classes of employees of the State; but in view of the fact that our Constitution and our laws have recognized the services of the veterans of the Civil war,[1] it does not seem to me a transgression of the powers of the Legislature to confer

[1] Const. 1894, art. 5, § 9.

upon these veterans additional recognition, to which we all agree they are entitled.

For these reasons I have determined to approve the bill."[32]

April 7.

Veto filed with Assembly bill entitled "An act to amend the primary election law, relative to enrollments other than on days of registration, the times when enrollment books shall be complete, the certification or declination of proposed delegates, alternates or candidates to the custodian of primary records, and the form of and descriptive emblem."

"This bill seeks to amend the existing primary election law by discontinuing the days for enrollment upon other than the days of registration.

The proposed enactment is undesirable, first, because it is applicable only to the city of New York although it is under the form of a general bill; second, because it would absolutely deprive young men who may attain their majority subsequent to the registration days from participation in the primaries of their party; and, third, because all voters who remove from the district in which they had voted, subsequent to election and preceding the next election, would be barred from assisting in the selection of the candidates of their party.

While the design of the bill is to cure certain evils in the city of New York, it would, as I have indicated, operate to deprive citizens of rights which they now have. The primary elections are a fundamental part of our government and through them the individual members of a political party may rebuke and make impossible the selection of undesirable candidates. It is of the greatest importance therefore that no hindrance should be placed in the way

[32] This act was sustained in People ex rel. Kenny v. Folks (1903), 89 App. Div. 171.

of those who are legally entitled to participate in the selection of candidates. Under existing law, the right to vote at a general election is accorded to any one who may have resided one year in the State, four months in the county and thirty days in his election district prior to the election.[1] Under this proposed act, rights that are thus accorded at a general election are taken away. This would be manifestly an injustice and a blow at good government. Present statutes provide for the punishment of offenders against the primary election laws and the enforcement of which should be depended upon to prevent violations rather than curtailing the rights of citizens.

For these reasons I have determined to withhold my approval from the bill."

April 10.

Veto of items in the appropriation bill, chap. 593.

FOREST, FISH AND GAME COMMISSION.

"For the salary 'of the fish culturist, three thousand dollars, and for his expenses while in the discharge of his official duty, nine hundred dollars, or so much thereof as may be necessary.'

I understand there is no fish culturist and therefore this appropriation is unnecessary.

For the salary 'of the assistant superintendent of forests, two thousand dollars, and for his necessary expenses while in the discharge of his official duties, nine hundred dollars, or so much thereof as may be necessary.'

This item is disapproved for the same reason as given concerning the item for fish culturist.

For the salary 'of stenographer and clerk, fifteen hundred dollars.'

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[1] Const. 1894, art. 2, § 1.

This is a new office and in view of the decreased work necessary during the coming year owing to the fact that there will be no lands purchased, the item is objected to and disapproved.

SUPERINTENDENT OF PUBLIC WORKS.

Payable from the canal fund.

'For additional clerk hire and contingent expenses of such collectors and inspectors, two thousand six hundred dollars or so much thereof as may be necessary.'

This item is disapproved because it is not considered necessary."

April 10.

Veto of items in the supply bill, chap. 594.

EXECUTIVE DEPARTMENT.

"For the governor for expenses of confidential investigations, two thousand dollars, or so much thereof as may be necessary."

I know of no use for this money. The amounts appropriated for executive use are sufficient without this.

COMPTROLLER.

"For the expenses of examinations and investigations of public institutions, made pursuant to law, the sum of two thousand dollars, or so much thereof as may be necessary, to be paid upon vouchers audited by the comptroller."

As the new fiscal supervisor will assume charge of this work I see no reason for confidential examinations upon the part of the comptroller.

"For the comptroller, for rent of office for the examiner of books of running race associations, five hundred and fifty dollars, and for furnishing said office, four hundred

dollars, or so much thereof as may be necessary. The amounts appropriated to be paid from the funds collected from said associations."

These items are disapproved because I do not believe them necessary.

"The sum of two thousand, three hundred and eighty-five dollars, being the unexpended balance of the appropriation made by chapter 391 of the laws of 1900, for acquiring and care of lands to commemorate the battle of Lake George, is hereby reappropriated for the purchase of lands, and for improvements, care and maintenance of same."

I am not sufficiently informed as to the necessity of this item to give it approval.

STATE ENGINEER AND SURVEYOR.

"For the state engineer and surveyor for completing new blue line maps of the Erie, Oswego and Champlain canals, the sum of one thousand five hundred dollars, or so much thereof as may be necessary, which such sum shall be payable from the canal fund and be immediately available."

There does not seem to me to be any necessity for this item. The necessity could only arise in case these maps were needed for use in the courts and this has been provided for in a former appropriation.

DEPARTMENT OF PUBLIC INSTRUCTION.

"For deficiency in the appropriation for printing circulars and programs relative to the observance of Arbor day, for distribution among the school districts of the State, and for expenses relating to the observance of that day, pursuant to the provisions of chapter 556, laws of 1894, five hundred dollars, or so much thereof as may be necessary."

There is another item carried in the appropriation bill for the same purpose.

STATE ARCHITECT.

"The sum of four thousand four hundred and forty-nine dollars heretofore appropriated by chapter 644 of the laws of 1891, for salaries in the office of the state architect, remaining unexpended, is hereby reappropriated for clerical services and the office expenses of said department."

Already liberal appropriations have been made for this department and in view of the fact that the amount of work to be carried on will necessarily be less this year than formerly, I see no reason why this additional amount should be allowed.

EXCISE DEPARTMENT.

"For secretary of the state commissioner of excise, five hundred dollars, in lieu and in full of his necessary expenses for the fiscal year ending September 30, 1902; and for the year ending September 30, 1903, a like sum of five hundred dollars, which expenses shall be payable in equal monthly instalments."

The allowances for expenses have grown to be a very serious item in the State's expense, and were originally intended for covering the necessary traveling expenses of officials in the discharge of their duties. Inasmuch as I can see no reason why the secretary of this commission should have such expenses, the item is disapproved.

FOREST, FISH AND GAME COMMISSION.

"For the salary of the assistant superintendent of forests from April first to September thirtieth, 1902, one thousand dollars, and for his expenses four hundred and fifty dollars, or so much thereof as may be necessary."

I see no necessity for this office.

"For compensation and expenses incurred in the enforcement of section 13 of the labor law, four thousand dollars, or so much thereof as may be necessary."

This is an absolutely new item and shows a tendency toward a growth of expenses in the department that I think is undesirable.

LUNACY COMMISSION.

"For the support and maintenance of the State hospitals, other than salaries and wages of officers and employees, pursuant to the provisions of the insanity law and the amendments thereof, two hundred and fifty thousand dollars, or so much thereof as may be necessary, to be paid from the moneys received for board and care of private patients, sale of farm products and other miscellaneous receipts of said hospitals."

I am convinced that this item is unnecessary and the form of this appropriation is so elastic that the money can be used for such a variety of purposes as to be liable to abuse. Such appropriation should be made direct and should not be included in such form in the supply bill. There is a balance in the treasury of the lunacy commission for maintenance, salaries and buildings, which seems to me to be ample for the present year. Aside from this, I am convinced that the recent amendments to the lunacy laws will result in economies that will render the item unnecessary.

DEPARTMENT OF PUBLIC BUILDINGS.

"Three thousand twenty-eight dollars and fifty cents, being the unexpended balance of the appropriation made by chapter 419 of the laws of 1900 as follows: 'For the superintendent of public buildings for work and material on the capitol necessary for the ventilation thereof, to be expended pursuant to plans made by the State architect and subject to his approval, six thousand dollars, or so much thereof as may be necessary,' is hereby reappropriated for the same general purposes."

In view of the fact that it is apparent that an adequate system of ventilation cannot be given to the capitol until some systematic plan is designed, this appropriation would simply be a waste of public money.

SUPERINTENDENT OF PUBLIC WORKS.

"For the superintendent of public works for repairs of highways on the Onondaga Indian Reservation to be expended under the direction of the superintendent of public works on the roads known as 'Quarry,' 'Cardiff,' 'South Hollow,' 'William Hill,' 'Albert Everingham' and 'Castle' roads, two thousand dollars, or so much thereof as may be necessary."

"For completing the construction of the new road on Onondaga Indian Reservation running from Indian Quarry about four hundred and sixty rods southeasterly to intersect with the La Fayette road, three thousand dollars, or so much thereof as may be necessary."

Appropriations for these purposes have been made for a number of years and I know of no good reason why they should be continued during the present year. There seems to be no necessity for them, as the superintendent of public works does not so report.

"For repairing and cleaning the Orville feeder in the town of De Witt, four thousand five hundred dollars, or so much thereof as may be necessary."

This is an item that can well wait. There is not sufficient need at present to justify its approval.

"For the superintendent of public works, for dredging the red rock out of the branch of the Oswego canal between Mudlock and Baldwinsville in the county of Onondaga, the sum of five thousand dollars, or so much thereof as may be necessary."

For the same reason above stated this item is disapproved.

"For the purpose of completing the clearing out, deepening and improving of the channel of Sawyer's creek and providing an additional means of draining, from the Fish road to Martinsville in the town of Wheatfield, in the county of Niagara, the sum of two thousand five hundred dollars, or so much thereof as may be necessary. The work to be done and moneys expended upon plans and specifications prepared and furnished by the State engineer and surveyor, and all of such work as far as practicable to be done by contract and let to the lowest bidder or bidders."

This item is also disapproved for the same reason.

"For the superintendent of public works for straightening, strengthening and repairing the berme bank of the Glens Falls feeder by building a substantial wall of masonry along said berme bank, commencing at the bridge on Burgoyne avenue in Sandy Hill, and extending thence south toward the spillway at the head of the combined lock, two thousand five hundred dollars."

I am informed that the superintendent of public works, with his appropriation for ordinary and extraordinary repairs, will be able to accomplish this work.

"For the repair of the highways on the St. Regis Indian reservation, three thousand dollars or so much thereof as may be necessary."

"For the purpose of removing dead and floating timber from the shores and waters of Cranberry Lake reservoir, St. Lawrence county, three thousand dollars or so much thereof as may be necessary."

"For the superintendent of public works for the purpose of dredging, blasting rock and removing dead timber and refuse from the Saranac river, between Saranac Lake village and the lower Saranac Lake so as to permit the easy passage of boats therein, one thousand five hundred dollars or so much thereof as may be necessary."

"For the superintendent of public works for continuing the work of clearing away refuse and rotting timber from lands flowed by the State on the shores of Raquette pond and along the outlet of Big Tupper lake, three thousand dollars, to be expended under the direction of the said superintendent."

"For the superintendent of public works, the sum of two thousand five hundred dollars or so much thereof as may be necessary is hereby appropriated to repair and widen and to erect barricades in dangerous places along the highway between the village of Childwold and Childwold Station in the town of Piercefield, St. Lawrence county."

"For continuing repairs on the public highways near Oswegatchie river in the town of Herman, St. Lawrence county, two thousand five hundred dollars, or so much thereof as may be necessary."

"For the repair and preservation of the public highway running along the westerly side of the Oswegatchie river in the town of Fowler, county of St. Lawrence between the village of Hailesboro and the village of Fullerville in said town, two thousand dollars or so much thereof as may be necessary."

"For the repair and preservation of the public highway running along and near the westerly side of the Oswegatchie river, county of St. Lawrence, between the village of Heuvelton and the Depeyster town line, one thousand five hundred dollars or so much thereof as may be necessary."

These items are objected to and disapproved because the State's liability is questioned. Until such liability is clearly established the State should not assume these expenditures. Another reason for disapproval is the liberality of the State in appropriations for good roads and the aid given to towns should be sufficient for such improvements whenever the town authorities consider them necessary.

"Three thousand dollars, or so much thereof as may be necessary, is hereby appropriated to repair the highways, on the Allegany Indian Reservation in the towns of Allegany, Carrollton, Elko, Salamanca, Redhouse, Great Valley, South Valley and Cold Spring, and on the Cattaraugus Indian Reservation in the towns of Perrysburg and Persia, in the county of Cattaraugus, said moneys to be expended under the direction of the superintendent of public works."

"For the protecting of the approaches to the bridge over Clear creek on said Indian reservation and improving the channel thereof, fifteen hundred dollars, or so much thereof as may be necessary."

"For graveling and repairing the highway known as Judge's road, and for grading, graveling and repairing the highway known as the Akron road upon the Tonawanda reservation, the sum of fifteen hundred dollars, or so much thereof as may be necessary."

These items are disapproved because there does not seem to me to be any immediate necessity for such expenditures. As I have stated, the State has heretofore made very liberal appropriations and until the necessity for this work is made apparent it does not seem proper to approve the appropriations.

MISCELLANEOUS.

"For the state superintendent of elections for the metropolitan elections district for the salaries of deputies, the sum of ten thousand dollars, or so much thereof as may be necessary."

There seems to be no reason why this increased amount should be added in the supply bill, when an appropriation has already been made for this purpose."

April 10.

Veto of items in the supplemental supply bill, chap. 595.

"For the preparation and publication of ten thousand copies of the McKinley memorial, pursuant to joint resolution, the sum of five thousand dollars, to be paid out of the general appropriation for legislative printing."

This item is disapproved because it is already provided for in the supply bill.

"For the superintendent of public works, for repairing, strengthening and extending the slope wall of the berme side of the abandoned Chemung canal in the city of Corning, constructed in pursuance of chapter three hundred and fifteen of the laws of eighteen hundred and eighty-eight, ten thousand dollars, or so much thereof as may be necessary."

This item is objected to and disapproved because there seems to be no real necessity for the appropriation.

"The secretary of state is hereby authorized and required to purchase and furnish to the governor, the lieutenant-governor, the members of the legislature, judges of the court of appeals, justices of the supreme court, county judges and surrogates, clerks of boards of supervisors and town clerks, and to the respective offices of each officer, and board or commission of state officers having an office in the capitol, for the use of such office, one set each of the revised statutes, codes and general laws of the State of New York, third edition, prepared by Clarence F. Birdseye, at fourteen dollars per set. Each set so distributed shall be properly labelled or endorsed to show the office or official to whom the same is given, and where said set is distributed to a town or county official or to any board or department, said set shall remain in the office of said official or body, and shall remain the property thereof, and shall upon the expiration of the term of office of any such official be turned

over by him to his successor in office, and the secretary of state shall prepare and have endorsed upon, or affixed to each volume of each of said sets notice that the same is to be so held under this act. The sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purposes thereof to be paid by the treasurer on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated, on vouchers to be approved by the secretary of state; but no part of said money shall be available until after the secretary of state shall have obtained a contract with the publishers of said revised statutes providing for the furnishing of a sufficient number of sets to carry out the provision as to distribution within the sum herein appropriated."

While it may be desirable to furnish certain officials of the State and counties with copies of the revised statutes, code and general laws, yet it does not seem to be within the province of the State to make such a wholesale distribution as that contemplated by this item. It is therefore disapproved.

April 11.

Veto of an Assembly bill entitled "An act to amend chapter 686 of the laws of 1894, entitled 'An act for the preservation of macadamized and other public highways in the counties of Queens and Nassau' relative to public highways in the counties of Queens and Nassau."

"This bill provides that no railroads shall be constructed on the streets and avenues in certain towns of the counties of Queens and Nassau. The bill is not approved because I do not believe it to be necessary, as sufficient protection is afforded in existing statutes."

April 11.

Veto of a Senate bill entitled "An act to provide for the construction of a bridge over Tibbett's brook ravine on the grounds of the Saint Lawrence state hospital and making an appropriation therefor."

"The improvement sought to be made by this bill is one coming more properly under the control of the state commission in lunacy. For a number of years it has been considered against public policy to make separate awards for institutional repairs. I believe that this improvement if necessary can be made out of appropriations already made by the State for the use of the state commission in lunacy."

April 11.

Veto of an Assembly bill entitled "An act making an appropriation for conducting evening examinations by the board of regents of the university of the state of New York."

"This appropriation has not been asked for by the board of regents and in view of the opinion I have had from them and of the fact that facilities are already provided, it is not deemed desirable to allow this appropriation. It is therefore disapproved."

April 11.

Veto of a Senate bill entitled "An act to amend the membership corporations law, being chapter 559 of the laws of 1895 as amended relative to the quorum of the board of directors, the election of directors, annual reports and the liability of the directors and changing the number of directors."

"The amendments to the membership corporations law proposed by this bill are so broad in their scope as to be liable to abuse. For that reason the bill is disapproved."

April 11.

Veto of a Senate bill entitled "An act to amend the tax law in relation to the payment of state fees and taxes by corporations."

"This bill was drawn under the recommendation in my annual message to the legislature and had for its object a more equitable distribution of the tax burden between foreign and domestic corporations. After hearings and amendments it was finally passed in its present form. A careful study of its provisions convinces me that while the bill would doubtless produce increased revenue yet there are so many uncertainties surrounding its legality that it would be the cause of a great deal of litigation. Rather than interfere with the present law and submit the State and corporations to the litigation that would probably be produced by the enactment of this bill, I have decided to disapprove it in the hope that the next legislature after a year's study of the situation may be able to introduce a measure that will be more satisfactory than this proposed one."

April 11.

Veto of a Senate bill entitled "An act regulating and controlling the erection, construction and inspection of electric wires and appliances used for electrical purposes, providing for the supervision and inspection of the same upon the streets and within buildings in the city of Yonkers."

"This bill is disapproved because it is an interference with existing rights and by its provisions could subject to considerable inconvenience and annoyance those engaged in the manufacture and sale of electric light and power, as well as individuals, through the authority the bill would confer upon the electrician of the police department of the city of Yonkers to enter not only electric plants and manufacturing establishments but also private dwellings under the guise of inspection duty."

April 11.

Veto of an Assembly bill entitled "An act making an appropriation for improving the Glens Falls feeder and repairing the prism and side walls thereof."

"This appropriation is disapproved because the extraordinary repair fund of the superintendent of public works is ample enough for the performance of this work."

April 11.

Veto of an Assembly bill entitled "An act to amend chapter six hundred and ninety-four of the laws of nineteen hundred and one, entitled 'An act making an appropriation for building a bridge over the Champlain canal connecting Burke avenue with Francis street in the village of Mechanicville,' by increasing the amount of said appropriation."

"There seems to be some question as to the title of the land upon which this bridge is to be erected. It does not seem desirable that this appropriation should be made during the present year."

April 11.

Veto of an Assembly bill entitled "An act to amend the charter of the city of Watervliet, relative to city officers."

"This bill is an amendment to the charter of Watervliet and provides for the appointment of the city recorder by the mayor. As the recorder is a judicial officer it seems to me that he should be selected by the voters of the city rather than be appointed by the mayor. The other feature of the bill which provides for bonding the city chamberlain is not of sufficient importance in my judgment to call for the approval of the bill."

April 11.

Veto of an Assembly bill entitled "An act to provide for acquiring the site of Fort Brewster in the town of Hastings, Oswego county, and making an appropriation therefor."

"While the object of this proposed measure is perhaps desirable yet it does not seem to me of sufficient importance to call for the expenditure of the amount which this bill seeks to appropriate. It is therefore disapproved."

April 11.

Veto of an Assembly bill entitled "An act for repairing and reconstructing the banks and channels of Glen creek in the village of Watkins and making an appropriation therefor."

"There seems to be no necessity for this expenditure at this time and whatever work may be necessary can be provided for from the extraordinary repair fund of the public works department."

April 11.

Veto of an Assembly bill entitled "An act authorizing the construction of a steel bridge and abutments and approaches thereto over the canal slip from the Erie canal to the Niagara river on North Niagara street in the village of Tonawanda, Erie county, New York, together with the adjacent canal retaining walls and making an appropriation therefor."

"The superintendent of public works reports to me that there is no absolute necessity for this work and it is therefore disapproved."

April 11.

Veto of a Senate bill entitled "An act to amend chapter one hundred and twenty-eight of the laws of eighteen hundred and ninety-nine entitled 'An act to incorporate the city of New Rochelle' as amended by chapters four hundred and sixty-two and five hundred and fifty of the laws of nineteen hundred."

"The object of this bill is to provide for the retirement and pensioning of teachers in the public schools in the city

of New Rochelle who have reached the age of sixty years and also shall have taught in the public schools of the city of New Rochelle during a period aggregating twenty years. This bill differs from other laws relating to the pensioning of municipal employees in that it provides that the pension fund shall be raised by direct tax instead of by contributions in whole or in part of intended beneficiaries. The bill is disapproved for that reason."

April 11.

Veto of an Assembly bill entitled "An act concerning the settlement and collection of the arrearages of unpaid taxes and assessments in the city of Cohoes, levied or assessed by the board of supervisors of the county of Albany, and imposing and levying a tax assessment and lien in lieu of such arrearages and to enforce payment thereof and to repeal chapter six hundred and ninety-six of the laws of nineteen hundred."

" The object of this bill is substantially to confer power and authority upon the assessors of the city of Cohoes to compromise and make settlement for arrearages of taxes. Such power should be lodged in the common council of the city and the bill is objected to because it takes it away from that body and confers it upon the assessors. It is undesirable also because of the enactment of a similar law in 1900 which has produced the condition of affairs that has brought about the introduction of this bill. The enforcement of the collection of taxes due is a right that all tax-payers have to expect and if compromise is to be made it should be made through the proper local authority, namely the common council and the mayor."

April 11.

Veto of an Assembly bill entitled "An act to provide for the drainage of flooded lands in the town of Royalton, Niagara county, occasioned by the overflow from the State canal feeder and back water from the State dam across the Tonawanda creek in Genesee county, and making an appropriation therefor."

"The superintendent of public works reports that there is no responsibility upon the part of the State to perform this work. Aside therefore from the appropriation carried by the bill it is not desirable that the State should voluntarily assume responsibility that is not fixed upon it. The bill is therefore disapproved."

April 11.

Veto of an Assembly bill entitled "An act to amend chapter six hundred and thirty-five of the laws of eighteen hundred and eighty-one, entitled 'An act to revise the charter of the city of Yonkers,' in relation to the appointment of additional commissioners of deeds."

"This bill amends the charter of the city of Yonkers and permits the appointment of one hundred commissioners of deeds by the mayor instead of forty, and also permits them to perform the duties of their office at any place within the county of Westchester. This bill is disapproved because the general statute in relation to the appointment of notaries provides enough persons for the convenience of the public for taking acknowledgments and affidavits and there can be no necessity in a city the size of Yonkers for a number so largely in excess of what other cities and towns of the State require for similar purposes."

April 11.

Memorandum filed with approved Assembly bill, chap. 494, to amend the Kingston charter.

"This act seeks to consolidate under one board the trustees of the various school districts of the city of Kingston.

At a hearing held before me it was shown that various features of school management in the city of Kingston were antiquated and that it was the only city in the State where such a system was in effect. The bill was disapproved by the mayor and common council of the city of Kingston and subsequently re-passed by the Legislature over the veto. The feature of the bill that seems to have given the greatest objection is that which names the trustees, and that is to me an undesirable provision. At the time of the hearing I had received no petitions in favor of it except from those who appeared in its behalf. Since then I have received numerous petitions signed by business men and tax-payers of the city of Kingston praying that the bill be enacted into law. From conversation I have had with the superintendent of public instruction, I am convinced that the school system of that city will be greatly benefited by the proposed consolidation and that the tax-payers would be very much better satisfied and that the result achieved would be more in the direction of a perfect school system. While it is impossible to secure unanimous approval of such a change as this in an existing system, it is to be regretted that the Kingston authorities do not coincide in the belief that the bill is desirable. However I think it is for the best interests of the schools in the city of Kingston and have decided to approve it."

April 11. The omnibus veto included the following bills:

Assembly bill number 1401, entitled "An act to amend the public health law relating to penalties for practicing veterinary medicine and surgery without a license."

Assembly bill number 1594, entitled "An act to make the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight entitled 'An act to provide for the improvement of public highways' applicable to the highways of the city of Rome outside of the corporation tax district."

Assembly bill number 1387, entitled "An act to amend chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight relative to the construction of connecting highways."

Assembly bill number 1011, entitled "An act to amend the consolidated school law in relation to the election of boards of education in districts of over three hundred."

Assembly bill number 1706, entitled "An act to repeal chapter two hundred and twenty of the laws of nineteen hundred and one, entitled 'An act to fix the compensation of the assessors in the town of Rotterdam, in the county of Schenectady. "

Assembly bill number 1177, entitled "An act in relation to the improvement of public highways in the county of Saint Lawrence."

Assembly bill number 517, entitled "An act to amend the labor law, relating to mediation and arbitration."

Assembly bill number 1462, entitled "An act to amend the forest, fish and game law, relative to close season for woodcock and grouse."

Assembly bill number 1585, entitled "An act to amend the tax law relative to the apportionment of the valuation of railroad, telephone, telegraph and pipe line companies between school districts."

Assembly bill number 1169, entitled "An act to amend the consolidated school law in relation to collector's notice to taxpayers."

Assembly bill number 150, entitled "An act in relation to real property, exempt by law from taxation, and providing for the transmission of report of the same to the legislature."

Assembly bill number 609, entitled "An act to amend the county law in relation to compensation of county judges in certain counties."

Assembly bill number 130, entitled "An act to incorporate the Western Mortgage Debenture Company."

Assembly bill number 1375, entitled "An act to amend chapter three hundred and sixty-nine of the laws of eighteen hundred

and ninety-five, entitled 'An act creating a commissioner of jurors for each county of the State having a certain population and regulating and prescribing the duties; also providing in what manner jury lists shall be made up and jurors drawn and notified in the courts of record in such counties, and how they may be exempted or excused, and the length of service of such jurors,' in relation to the service of jurors."

Assembly bill number 1795, entitled "An act to amend the tax law in relation to sales for unpaid taxes in the county of Clinton."

Assembly bill number 1725, entitled "An act to amend chapter three hundred and twenty-two of the laws of eighteen hundred and ninety, entitled 'An act to revise, amend and consolidate the several acts relating to the village of Plattsburgh, and to repeal certain acts and parts of acts,' relating to the issue of bonds for public improvements."

Assembly bill number 1099 (Senate reprint 1119), entitled "An act authorizing the agent and warden of Clinton prison to sell and transfer certain water mains, pipes and hydrants to the village of Dannemora, New York."

Assembly bill number 1570, entitled "An act to amend chapter thirty-nine of the laws of eighteen hundred and seventy-four, entitled 'An act to reorganize the village of Medina' in relation to the police department."

Assembly bill number 1316, entitled "An act to amend the town law relating to division fences."

Assembly bill number 927, entitled "An act to amend the forest, fish and game law in relation to spearing suckers and eels in Long pond, Columbia county."

Assembly bill number 1389, entitled "An act authorizing the boards of supervisors to establish county schools of agriculture and domestic economy."

Assembly bill number 1739, entitled "An act to amend the forest, fish and game law in relation to the close season for woodcock on Long Island."

Assembly bill number 1351, entitled "An act to amend the highway law relating to the use of automobiles on streets and highways and in public places."

Assembly bill number 1107, entitled "An act to amend the tax law in relation to collectors' notice in Suffolk county."

Assembly bill number 1427, entitled "An act to amend the forest, fish and game law relating to the powers of supervisors in Queens, Nassau and Suffolk counties."

Assembly bill number 1312, entitled "An act conferring jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the administrators of the goods, chattels and credits of Amos C. Hall, deceased, against the State, and to make an award thereon."

Assembly bill number 138, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Henry P. Burgard against the State for damages alleged to have been sustained by him and to render judgment therefor."

Assembly bill number 1180, entitled "An act to repeal chapter seventy-seven of the laws of eighteen hundred and ninety-eight, entitled 'An act to legalize the division into election districts of the town of West Turin in Lewis county.'"

Assembly bill number 757, entitled "An act to amend the code of civil procedure relative to undertakings for the discharge of personal property from attachments."

Assembly bill number 782, entitled "An act to amend the insurance law in relation to the construction of fire insurance policies."

Assembly bill number 1164 (Senate reprint 890), entitled "An act to amend chapter three hundred and forty-two of the laws of eighteen hundred and ninety-two relative to practice and fees of jurors in the municipal courts of the city of Syracuse."

Assembly bill number 1226, entitled "An act to amend the village law relating to the withdrawal of part of a village situated in two or more towns."

Assembly bill number 1645, entitled "An act to amend section thirty-three hundred and sixty-five of the code of civil procedure in relation to the contents of the answer in proceedings for the consideration of real property."

Assembly bill number 379, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Alexander Hamilton McIntosh Stuart against the State for damages alleged to have been sustained by him, and to render judgment thereon."

Assembly bill number 948 (Senate reprint 853), entitled "An act to amend chapter eighty, laws of eighteen hundred and seventy-one, entitled 'An act for the election of a receiver of taxes and assessments for the town of Rye and the village of Port Chester' in regard to the receiver's bond, salary and expenses and the appointment of a deputy receiver."

Assembly bill number 898 (Senate reprint 792), entitled "An act to amend the primary election law relative to enrollments other than on days of registration, the times when enrollment books shall be complete, the certification or declination of proposed delegates, alternates or candidates to the custodian of primary records, and the form of and descriptive emblem."

Assembly bill number 598, entitled "An act to amend the forest, fish and game law in relation to grouse."

Assembly bill number 778, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Walter J. Schlaefer against the State of New York for damages alleged to have been sustained and to render judgment therefor."

Assembly bill number 731, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Jairus Pierce against the State of New York for damages alleged to have been sustained by him, and to render judgment therefor."

Assembly bill number 831 (Senate reprint number 1007), entitled "An act to amend the executive law relative to notarial clerks."

Assembly bill number 1683, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Henry G. Whitney against the State of New York for damages alleged to have been sustained by him and to render judgment therefor."

Assembly bill number 1566, entitled "An act to amend and revise chapter three hundred and forty-three of the laws of eighteen hundred and eighty-three, entitled 'An act to incorporate the fire department of the village of Sing Sing (now the village of Ossining) as amended by chapter thirteen of the laws of eighteen hundred and eighty-four' is hereby further amended so as to read as follows."

Assembly bill number 261, entitled "An act empowering the board of water commissioners of the village of Peekskill to issue additional bonds for the purpose of extending the water mains of said village."

Assembly bill number 1096 (Senate reprint number 1039), entitled "An act to amend the forest, fish and game law relative to nets in Hudson and Delaware rivers and adjacent waters."

Assembly bill number 477 (Senate reprint number 1038), entitled "An act to amend the forest, fish and game law in relation to the season for trout in Keuka lake."

Assembly bill number 22 (Senate reprint number 788), entitled "An act to amend the code of civil procedure relative to compulsory accountings in equity actions."

Assembly bill number 283, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Annie M. Smith against the State of New York for damages alleged to have been sustained by her at the state industrial school, Rochester, on or about January twenty-first, nineteen hundred and one."

Assembly bill number 1043, entitled "An act to amend section four hundred and thirty-nine of the code of civil procedure relative to papers upon which orders of publication may be made."

Assembly bill number 1445, entitled "An act declaring Deer river, and its tributaries, in the towns of Montague, Pinckney and Denmark, in the county of Lewis, a public highway, and providing for the assessment and payment of damages to riparian owners thereon."

Assembly bill number 929, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the claim or claims of the Brandow Printing Company and to render judgment therefor."

Assembly bill number 1722, entitled "An act to amend chapter one hundred and eighty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of cities of the second class' in relation to a clerk to the chief of police."

Assembly bill number 1227, entitled "An act to amend section seven hundred and fourteen of the code of civil procedure, relative to notice of application before judgment."

Assembly bill number 1605, entitled "An act to amend the county law relative to district attorneys."

Assembly bill number 1769, entitled "An act to amend the real property law relative to acknowledgments and proofs of conveyances of real property."

Assembly bill number 756, entitled "An act to amend the forest, fish and game law in relation to the close season for black and gray squirrels."

Assembly bill number 1400, entitled "An act in relation to assessors and assessments in the towns of Nassau county having a population exceeding seventeen thousand."

Assembly bill number 892 (Senate reprint number 1033), entitled "An act to amend the forest, fish and game law in relation to taking game in Rockland county."

Assembly bill number 1173, entitled "An act to amend the code of civil procedure relative to proof of handwriting."

Assembly bill number 414, entitled "An act to declare a portion of South Sandy creek in the county of Jefferson a public highway for the purpose of floating logs and timber."

Assembly bill number 1711, entitled "An act to authorize the Johnsburgh Electric Light, Heat and Power Company to construct and maintain a dam across the Hudson river in the towns of Johnsburgh and Chester, Warren county."

Assembly bill number 771, entitled "An act to amend the county law relating to fees of county clerks in certain counties."

Assembly bill number 777, entitled "An act conferring jurisdiction upon the court of claims to hear, try and determine the claims of Ellis W. Storms as administrator of the estate of Cora Storms, deceased; William Fizzell as administrator of the estate of Maude Fizzell, deceased; Samuel A. Hathaway as administrator of the estate of Bessie G. Hathaway, deceased; Eugenia Morris as administratrix of the estate of Phineas J. Morris, deceased; Albert G. Jones as administrator of the estate of Inez Jones, deceased; H. A. Williams as administrator of the estate of May Williams, deceased, against the State of New York and to make awards therefor."

Assembly bill number 1481, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of Thomas H. Smith and others against the State of New York for damages alleged to have been sustained in the towns of Galen and Savannah, county of Wayne, by them and to render judgment thereon."

Assembly bill number 687 (Senate reprint number 1141), entitled "An act to amend the forest, fish and game law in relation to the taking or possession of lake trout."

Assembly bill number 738, entitled "An act to amend the forest, fish and game law relative to nets and set lines for fishing."

Assembly bill number 1629, entitled "An act to amend chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, being chapter nineteen of the general laws and known as the highway law."

Assembly bill number 1527, entitled "An act to amend the tax law, relating to statement and payment of taxes."

Assembly bill number 783, entitled "An act to release to Ellen Riley, all the right, title and interest of the people of the State in and to a lot of land whereof her husband James Riley died seized."

Assembly bill number 1594, entitled "An act to make the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, entitled 'An act to provide for the improvement of the public highways,' applicable to the highways of the city of Rome outside of the corporation tax district."

Assembly bill number 1629, entitled "An act to amend chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, being chapter nineteen of the general laws and known as the highway law."

Assembly bill number 1808, entitled "An act to amend chapter seventy-three of the laws of nineteen hundred and two, entitled 'An act relating to rural cemetery associations in counties of the State having a certain population' by exempting the town of Mount Pleasant from the provisions of said act."

Assembly bill number 673, entitled "An act to authorize the Warren County Electric Light, Heat and Power company to construct and maintain a dam across the Hudson river in the town of Thurman, Warren county."

Assembly bill number 1543, entitled "An act to amend chapter four of the laws of eighteen hundred and ninety-one, entitled 'An act to provide for rapid transit railways in cities of over one million inhabitants' in relation to the publication or service of notice in condemnation proceedings."

Assembly bill number 1789, entitled "An act to amend the stock corporation law in reference to increasing or reducing capital stock."

Assembly bill number 1495, entitled "An act to authorize the comptroller of the State to hear and determine an application of William L. Ostrander for cancellation of tax sales situate in the town of Hope, county of Hamilton, for unpaid taxes."

Assembly bill number 1494, entitled "An act to authorize the comptroller of the State to hear and determine an application

of Everett R. Wheeler for cancellation of tax sales of lands in the town of Bleecker, county of Fulton, for unpaid taxes."

Assembly bill number 1616, entitled "An act to authorize the abandonment of a certain school site in the first ward of the borough of Richmond, the discontinuance of the work of erecting a building for a high school thereon, the assessment of damages of certain contractors, the determination of a new school site and the erection thereon of a building for a high school by the continuance and extension of the original contract."

Assembly bill number 1505, entitled "An act to amend the public health law relating to the adulteration of and deception in the sale of drugs, chemicals and other substances."

Senate bill number 764, entitled "An act in relation to the enforcement and collection of taxes in the county of Oneida."

Senate bill number 1041, entitled "An act to amend section nine of title one of chapter five hundred and fifty-five of the laws of eighteen hundred and sixty-four, entitled 'An act to revise and consolidate the general acts relating to public instruction' as amended by chapter six hundred and fifteen of the laws of eighteen hundred and eighty-six, relating to deaf and dumb pupils."

Senate bill number 1080, entitled "An act to amend chapter one hundred and eighty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of cities of the second class.'"

Senate bill number 1086, entitled "An act to amend section twenty-nine of chapter three hundred and seventy-six of the laws of eighteen hundred and ninety-six, entitled 'An act in relation to domestic commerce law, constituting chapter thirty-four of the general laws.'"

Senate bill number 1190, entitled "An act to amend the agricultural law relating to payment of license fees for the sale of concentrated commercial feeding stuffs."

Senate bill number 976, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Mamie Myers formerly Hines, against the State

for damages alleged to have been sustained by her and to render judgment therefor."

Senate bill number 819, entitled "An act to amend the forest, fish and game law relative to non-residents taking shell-fish."

Senate bill number 1049, entitled "An act to authorize the State comptroller to hear and determine the application of Dorman T. Warren for cancellation of the sale of a tract of land in the former township of New Utrecht, Kings county."

Senate bill number 556, entitled "An act to amend section ninety-one of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, entitled 'An act in relation to railroads constituting chapter thirty-nine of the general laws' and the several acts amendatory thereof, relating to street surface railroads."

Senate bill number 1067, entitled "An act to amend certain sections of chapter twenty of the laws of nineteen hundred, entitled 'An act for the protection of the forests, fish and game of the State, constituting chapter thirty-one of the general laws,' relating to various subjects."

Senate bill number 857, entitled "An act to empower any city to remove bodies, monuments or gravestones from cemeteries or burial grounds, situated within its corporate limits, and to provide a suitable place for the re-interment of said bodies, to re-inter the same, and to reset the monuments and gravestones, and to issue bonds therefor, and to acquire the title in fee to such grounds in the name of and vest the title thereto in such city."

Senate bill number 1243, entitled "An act in relation to the New York State Reformatory for Women at Bedford."

Senate bill number 936, entitled "An act to amend chapter one hundred and ninety-eight of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of cities of the second class.'"

Senate bill number 689, entitled "An act to amend the forest, fish and game law relative to the seizure and destruction of illegal devices for fishing."

Senate bill number 683, entitled "An act conferring jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the Dutton Pneumatic Lock and Engineering Company against the State for services rendered by it to the State, and render judgment therefor."

Senate bill number 94, entitled "An act to amend an act entitled 'An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of James W. Van Slyke and Francis E. Merritt of Utica, New York; Westley Barr of Carthage, New York; Samuel H. Palmer, as surviving partner of the firm of James Remington and Palmer, and Louis Hasbrouck, Jr., of Ogdensburg, New York, against the State for work done and services performed for the State and to render judgment therefor.'"

Senate bill number 576, entitled "An act for the relief of school district number five in the town of Smithtown in the county of Suffolk."

Senate bill number 630, entitled "An act to amend the village law relating to the extension and diminishing of boundaries."

Senate bill number 898, entitled "An act to provide for the holding of town meetings and elections in the county of Montgomery."

Senate bill number 904, entitled "An act to amend chapter seven hundred and six of the laws of nineteen hundred and one, entitled 'An act to make the office of the register of the county of Kings a salaried office and regulating the management of said office' relating to the clerks of such office."

Senate bill number 517, entitled "An act for the relief of the German hospital and dispensary in the city of New York, and to authorize a change of a lease from the mayor, alderman and commonalty of the city of New York to the German hospital and dispensary in the city of New York to a grant, and to authorize the sale or leasing of the said property by the German hospital and dispensary in the city of New York."

Senate bill number 288 (Assembly reprint number 1072), entitled "An act to amend chapter four hundred and forty-one of

the laws of eighteen hundred and ninety-nine entitled 'An act to create a commissioner of jurors in the several counties of this State,' relative to the payment of the salary of the commissioner, et cetera."

Senate bill number 952, entitled "An act in relation to assessors and assessments in the towns of Nassau county having a population exceeding seventeen thousand."

Senate bill number 1006, entitled "An act relating to membership corporations, constituting chapter forty-three of the general laws, in relation to drawing juries on exhibition grounds."

Senate bill number 877, entitled "An act to amend the highway law in relation to cutting and destroying noxious weeds, briers and brush growing along the highway in the forest preserve."

Senate bill number 992, entitled "An act to amend chapter one hundred and eighty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of the cities of the second class,' as amended by chapter five hundred and eighty-one of the laws of eighteen hundred and ninety-nine."

Senate bill number 878, entitled "An act to amend section twenty-two hundred and thirty-five of the code of civil procedure relating to the petition in summary proceedings by person entitled to possession."

Senate bill number 634, entitled "An act creating the office of county auditor in the county of Saratoga, providing for the appointment of such an officer and defining his powers and duties."

Senate bill number 917, entitled "An act concerning grants of land within this State attempted to be made by the crown after the taking effect of the act of parliament of 1 Anne, chapter 7, section 5, and prior to October fourteenth, seventeen hundred and seventy-five, and declaratory of the law relative thereto."

Senate bill number 773, entitled "An act regulating the appointment of trustees and conferring certain powers upon justices of the supreme court."

Senate bill number 685, entitled "An act to amend section two of the business corporations law relating to the formation of corporations."

Senate bill number 1134, entitled "An act to create and establish a bureau of elections in the county of Erie."

Senate bill number 1234, entitled "An act in relation to Clinton avenue in the borough of Brooklyn and city of New York."

Senate bill number 975, entitled "An act to amend an act entitled 'An act to enable any person or persons whose rights have been impaired by the action of any municipality in the State in derogation of its grant or covenant to bring an action,' being chapter six hundred and fifty-nine of the laws of nineteen hundred and one."

Senate bill number 875, entitled "An act to amend the tax law in relation to the taxation of savings banks."

Senate bill number 724, entitled "An act to release to Laura C. Geib all the right, title and interest of the people of the State of New York in and to certain real estate in the city of Buffalo, county of Erie, State of New York."

See another omnibus veto of April 18.

April 14.

Veto of a Senate bill entitled "An act relating to the commissioners of the Palisades Interstate Park and extending their jurisdiction."

"This bill seeks to confer upon the commissioners of the Palisades Interstate Park additional jurisdiction to include Hook Mountain in the village of Upper Nyack. During the session of 1901 an appropriation was made for the purchase of what is known as the Palisades and under this authority the sum of four hundred thousand dollars was appropriated by the State of New York, supplemented by an appropriation of land and money from the State of New Jersey. The property thus sought to be preserved has been secured and will be free forever from encroachments. The extension of this right therefore to include

what is not properly within the Palisades is a question of policy which the State through the legislature has not passed upon. Until it is clearly defined as to whether it is the intention to acquire property other than that covered by the act creating the Palisades Commission, I would deem it unfair to place valuable property under the control of this commission and to put a cloud upon the title to such property by extending the right of condemnation over it. The bill under consideration carries no appropriation, and investigation has convinced me that it can not be operative until the State has made an appropriation for the acquisition of such property. Therefore until such appropriation is made it does not seem to me wise to approve this measure. Believing that the interests of the State will be fully protected by a legislative act which carries the necessary appropriation as well as the power of condemnation, this bill has been disapproved."

April 14.

Veto of a Senate bill entitled "An act to refund to the First National Bank of Ballston Spa, Saratoga county, certain taxes, erroneously paid by it in the year nineteen hundred and one."

" This bill seeks to compel the town of Milton, the village of Ballston Spa, and union free school district number one, in said town, to repay to the First National Bank of Ballston Spa the sum of eleven hundred and sixty-four dollars to be assessed upon the various localities heretofore mentioned. This bill is objectionable for the reason that there is no question as to the legality of the assessment, and while it is true that unfortunate complications arose and defalcation followed which caused the bank to become involved and placed in the hands of the comptroller of currency, yet at the time of making the assessment so far as the general public knew there was no reason why the assessors should have made any lower

assessment than they did, that is, one per cent. upon the capital, surplus and undivided profits. The Legislature cannot direct a municipality to do an illegal act and to refund money contrary to the provisions of the Constitution,[k] nor should they violate the principal of home rule. If these taxes were erroneously assessed the board of supervisors possess ample authority to correct the same; if illegal, the courts have full power to afford redress. For these reasons it is evident that this bill is a violation of the principle of home rule, on which account I have disapproved a number of measures which have come before me and must therefore disapprove this."

April 14.

Veto of an Assembly bill entitled "An act to authorize the Warren county electric light, heat and power company to construct and maintain a dam across the Hudson river in the town of Thurman, Warren county"; and

Assembly bill entitled "An act to authorize the Johnsburgh electric light, heat and power company to construct and maintain a dam across the Hudson river in the towns of Johnsburgh and Chester, Warren county."

"For a number of years grants have been made by the Legislature for the purpose of damming the rivers under its control. While in general I am in favor of anything that will encourage the manufacturing interests, yet the trend of legislation of later years has been to exact for the use of public franchises many considerations. This has been so notably in the case of street railroads, electric light and other public utility companies, when payments have been exacted in the nature of a State tax as well as direct remuneration to the localities affected. While I have no doubt that the interests which are to be benefited by these proposed dams would ultimately be of some con-

[k] Const. 1894, art. 8, § 10.

siderable service to the people of the State, yet I am convinced that the Legislature in granting these public rights should, either to the locality or to the State, demand a proper return for the privilege accorded. In making these concessions it seems to me that the same body which has the power to make other grants of lands under water,—that is, the land board,—should be given this additional authority for the purpose of passing upon these proposed grants. Then a certain definite remuneration should be determined upon either in the form of a yearly tax or by the payment of a lump sum for the privilege thus accorded."

April 15.

Veto of a Senate bill entitled "An act in relation to an existing grade crossing over the Harlem railroad at Mount Vernon avenue and Oak street in the city of Mount Vernon, and to provide for the payment of the cost of the change thereof and of the work to be done."

"This bill is disapproved because it calls for an extraordinary appropriation by the State and the state board of railroad commissioners has ample power and authority to act in reference to grade crossings and provide the means of carrying out the necessary improvements in connection therewith."

April 15.

Memorandum filed with approved Senate bill, chap. 598, to amend the banking law as to investments by savings banks.

"This bill seeks to extend the legal investments for savings banks to include the bonds of the city of Los Angeles, California. At the hearing before me upon this bill, certain members of the executive committee of the Savings Banks Association of the State of New York appeared in opposition, and I have on file letters from other members

of that committee not present at the hearing favoring this proposed legislation. Because of this difference of opinion among the savings banks officials it became necessary for me to investigate the legality of these bonds, the power of the municipality of Los Angeles to issue them and the validity of the charter of the city of Los Angeles. For that purpose I have been in communication with some of the most prominent people on the Pacific coast and have received from the Governor and Attorney General of California and from other sources the most positive assurances that there is no question concerning the legality of the bonds or of their safety as an investment. It seems to be the consensus of opinion that the scope of savings banks investments should be greatly enlarged, and the legislature passed prior to the passage of this act what was known as the Krum bill now chapter 440 of the laws of 1902. It also increased the limit for real estate loans from fifty to sixty per cent. A recent enactment which permits administrators and trustees to invest in the same class of securities as are authorized for savings banks, places upon the legislature and the Executive the necessity for the most careful investigation of securities in which it is proposed to allow savings banks to invest. It was due to this fact that extreme care and time were taken for the consideration of this bill. I have reached the conclusion that so far as the bonds of the city of Los Angeles are concerned they are an absolutely safe investment for savings banks. While the approval of the executive committee of the savings banks association is not a prerequisite to favorable consideration, yet I should have preferred to have had their approval of the measure. In view of the fact however that they were divided in their opinion and as the result of investigation made by me personally, I have concluded to approve the bill."

April 15.

Veto of an Assembly bill entitled "An act to regulate public dancing in certain counties of the State."

"While I would like to approve this bill because I believe the acts complained of should be prohibited and prevented, yet the annexed opinion submitted to me by the Attorney General must govern my action. It seems to me however that the police power already lodged in the city of New York should be sufficient to bring about the relief desired."

STATE OF NEW YORK,

ATTORNEY GENERAL'S OFFICE,
ALBANY, *March* 28, 1902.

Memorandum on Assembly bill, printed No. 17 (Senate reprint 973) introduced by Mr. Bennett, entitled "An act to regulate public dancing in certain counties of the State."

This bill seems open to objection. In the first place the prohibitions in regard to dancing being allowed within half-a-mile of a cathedral only applies while said cathedral is in process of erection and unconsecrated. After it is erected and consecrated, such dancing may be carried on within two hundred feet of the edifice as far as this act is concerned. Such a prohibition, under those circumstances, seems uncalled for.

Again, the act seems to be within the decisions which hold that legislation under the guise of police power which in reality is merely arbitrary and destructive of the constitutional rights of the people, is unconstitutional.

People vs. Marx, 99 N. Y. 377.
Senton vs. Steele, 119 N. Y. 226.
Colon vs. Lisk, 153 N. Y. 188.
Health Dept. vs. Rector, 145 N. Y. 32.

This act is aimed at only one county in the State and limited to a particular locality in that county, for it is an

evidently known fact, that there is but one cathedral in process of erection in the State and that is in New York City. It is legislation which affects the vested rights of the citizens in that particular locality alone, and that too without mentioning in the bill that such amusement is harmful to the community in any way or injurious to its morals. Such legislation has been held of no effect. (See Matter of Jacobs, 98 N. Y. 110.)

This act also seems to be covered by the language used by the court in the case of New York Sanitary Co. vs. Health Department, 61 App. Div. 106, affirmed by the court of appeals.

"It is not an act for the general regulation of a business which might be conducted so as to impair public health or seriously interfere with the convenience and comfort of the people of a part of the city," and the court held the amendment to the charter unconstitutional on the ground that it denied equal protection of the laws.

I am of the opinion that this bill is open to the same objection and is unconstitutional.

JOHN C. DAVIES,
Attorney General.

April 15.

Memorandum filed with Approved Senate bill, chap. 613, to amend the navigation law.

"This bill seeks to provide a legal means for the condemnation of the rights of riparian owners in any river or stream in this State which is or shall be recognized by law or used as a public highway for running logs, timber or wood by flooding or floating, and to the extent that may be necessary for the public use thereof as such highway and make applicable to such proceeding the general condemnation law of this State. Until a decision of the Court of Appeals in December 1901, it had been assumed that chapter 592 of the laws of 1897 afforded authority

under which persons desiring to use such rivers or streams for floating or flooding lumber, logs or timber might condemn the interest of the riparian owner therein. That act provided for the appointment of appraisers in case damages could not be agreed upon, and required claims for such damages to be made within one year after they accrued. Section 75 of that act provided for the giving of bonds to the people of the State in the sum of five thousand dollars as an indemnity against any loss or damages that might be caused to any property by reason of the use of such river or stream as provided in said act. This latter section is repealed by section 2 of the proposed act. It should be understood in considering this bill that neither the law of 1897 nor the present bill gives any right to enter upon the lands of the State or to permit the overflowing of such lands, because that is within the constitutional inhibition.[1] This restricts us in the consideration of this bill to its effect upon private lands and private owners. At the hearing had before me, this interpretation of the proposed law was agreed to by both those who appeared in opposition to it and by those in favor of its enactment. This bill proposes therefore a substitute for the act which under the decision above referred to in the case of Brewster vs. Rogers Company (169 N. Y. 73,) was declared unconstitutional because of the fact, as the court therein held, that the right of eminent domain and the power of condemnation had been given by that act to private individuals for a private easement and for a particular time and not for a public use.

The proposed act, shorn of all other considerations, will compel those who use these streams, if they exercise the power of condemnation, to devote them to the public use, and it is sought to continue rights which have been heretofore accorded and which have been permitted private

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1 Const. 1894, art. 7, § 7.

owners upon private agreements with riparian owners for the use of their streams, paying only for such damages as may have accrued during their use. Such streams therefore under the proposed act would become public highways in name as well as in fact, and the rights, so far as the individuals seeking to obtain an easement are concerned, would be no greater than have been exercised for years, while the riparian owner would still have the same claim for damages from persons using these streams outside of the right so condemned. No more harm therefore can result from the enactment of this bill than from the private agreements which have heretofore existed or under the power of appraisal, which up to the decision of the court of appeals had controlled the determination of damages for such use. For these reasons I am convinced that the bill should receive approval."

April 15.

Memorandum filed with approved Assembly bill, chap. 615, the tax levy.

"In approving Assembly bill number 1827 fixing the tax rate at 13-100 of a mill for the fiscal year beginning October 1, 1902, I take this opportunity of congratulating the people of the State upon the fact that the Legislature, through its action, has afforded relief to the farmer and the small tax-payer as well as the large owner of real estate from the burdens of a direct tax. That there has been no desire in accomplishing this result to curtail in any manner necessary expenditures is apparent by the most casual examination of the various appropriation bills. It has met the demand for better educational facilities, for the improvement of the highways of the State through the operation of the Higbie-Armstrong law, by the large appropriation of $795,000, as well as by increasing the State's share of road-building expense from 25 to 50 per

cent. under the so-called Fuller law, as amended by the Plank bill enacted at the session of 1902. It has met all proper demands while striving to keep the expenditures of the great number of commissions created between the years 1882 and 1894 within reasonable limits. Following the precedents established by recent Legislatures of the same political faith, it has sought to give effect to the many wise laws relating to the subject of indirect taxation through amendments which have increased the tax from corporations during the year ending October 1, 1902, over the preceding year by the sum of $2,972,171.12, and the taxpayers can look with confidence for a still further increase during the coming year, so that the State treasury will be richer from these sources by at least $3,500,000 over the year 1900. The present administration has also had the benefit of the revenues produced by the so-called Raines liquor tax law, which paid to the localities, while adding to the State's indirect revenue, $4,197,858.72 yearly, $5,474,448.82 more than was received by the counties annually during the operation of the law which it repealed, thus refuting the charge that it has deprived the localities of their moneys and by indirection shifted the burden from the State to the municipalities.

It may not be amiss to state that in addition to the financial effect of this law, other features have not been neglected, and a reduction in the number of licensed places of 6,602 is shown.

That the reduction in the State tax rate is not a mere juggling of figures is shown by a comparison of the records with that of one of my predecessors — Governor Flower — since that administration seems to be the one chosen for this purpose by those who question the accuracy of the results of the labors of the two Legislatures of 1901 and 1902. For Governor Flower's rugged honesty and character I entertain the highest respect. For his determination to correct the abuses of the so-called county

system for the insane as well as in condemning the extravagances in the management of State institutions which had grown up from 1883 to the period of his incumbency, I have the greatest admiration. The State owes to him a lasting debt of gratitude for the services thus rendered. With the growth of New York it necessarily followed that there should be a corresponding increase in the expenses of government. But it is well to remember that since 1894 the State has assumed the entire care of the insane and charitable institutions, and that the localities are thus relieved from their support. It must also be understood that the Constitution adopted by the people in 1894 increasing the membership of the Legislature, creating new judicial tribunals, as well as increasing the number of Supreme Court judges by more than thirty, has caused a large additional expense. Extravagance even in assuming these additional burdens does not prevail however as the expense for the care of the insane was less by $1,038,196.59 in 1901 than in 1900, and will be $1,373,076.81 less in 1902 than in 1900. In the charitable institutions the same corresponding decrease is shown, and this too without in any way or manner taking from the inmates the necessaries of life, the principle which has directed these reductions being the demand for "fewer castles and more bread." As an illustration of the growth of the expenses of the judiciary, it may be stated that in 1894 they were $592,578.27 and in 1902 $1,072,632. A not inconsiderable reform has been effected in the consolidation and elimination of unnecessary commissions. As the result of the action of the Legislature of 1901, the three departments of labor were consolidated into a single-headed commission, the Fish, Forest and Game and Forest Preserve boards were placed under a single salaried commissioner, and the Department of Health is now administered by one competent person with the result that while the expenses of these commissions for 1900 were $641,-

636.78, the appropriations for 1902 were but $348,872.68, a saving of $292,764.10, $250,000 of which is due to the non-appropriation for the purchase of land and $42,764.10 to a decrease in administrative expenses.

In considering the total of the appropriations, the years 1893 and 1894 do not show the total of expenditures for the various institutions and departments, because before the enactment of the so-called Higgins law of 1899, chapter 580, they were allowed to hold their receipts and the appropriations made by the Legislature were in addition to these sums. Under the Higgins law however they are covered into the treasury and are only available upon appropriations, so that for the purpose of comparison it is but fair to take out the refunds which cover the payments into the banking, insurance and railroad departments and the earnings of institutions to properly charge up what the Legislature in the matter of appropriation is responsible for, and are therefore not direct appropriations of the State. What is known as " refunds " also includes the taxes paid by the various counties outside the city of New York over and above the sum of $7,200 allowed by the State for salaries of the Supreme Court judges residing in such districts.

That this work may be compared with the administration covering the years 1893-1894, the following figures are submitted:

Appropriations for 1901	$22,307,608 75
Appropriations for 1902	21,954,511 43
Total	$44,262,120 18

Appropriations for 1893	$17,367,335 98
Appropriations for 1894	15,713,578 20
Total	$33,080,914 18

The refunds exclusive of board for inmates of asylums and prisons, for farm products, etc., during 1893-1894, amounted to $784,650.70. The total net appropriation therefore under Governor Flower's administration was $32,296,263,48, in addition to the receipts from asylums, etc., which did not pass through the State Treasurer's hands.

All receipts from asylums and other sources during the present administration amounted to $2,041,327.13, which, deducted from the total appropriation of $44,262,120.18, leaves the actual appropriation payable from taxes raised of $42,220,793.05, an apparent difference of $9,924,529.57 over the years 1893-94.

It may be claimed that this difference as between the deductions on account of refunds is too large but when we take into consideration that the board of inmates amounting to $250,000.00 and the sales of farm products were not formerly included in the appropriation bills but were supplemental thereto and only since 1899 have been made absolute appropriations, and when we also understand that the judiciary has increased its expenses $480,053.73 in 1902 over 1894, or a total of $960,107.46 in the two years under consideration, the most of which is refunded to the State by the localities affected, and that the balance comes from railroads, insurance companies and banking institutions and is made necessary by the increased work placed upon these departments, this difference is very well explained. It is understood however that it does not enter into the tax rate and could not under any circumstances be a part of the tax levy.

But that the difference in the total appropriations subject to tax levy is only apparent is shown by the following statement:

The insane population of the State has grown from 8,111 in 1894 to 22,835 in 1902, and the number of inmates in the State charitable institutions has increased

from 3,654 in 1894 to 6,657 in 1902, and a large percentage of the increase in this population as shown by present statistics was formerly a charge against localities. With this knowledge a study of the comparative table of appropriations here submitted is interesting:

	1893–1894.	1901–1902.
Legislature	$1,013,179 91	$1,277,440 37
Printing	641,085 88	1,337,300 00
State Charities	2,929,984 79	3,923,169 03
State Insane	3,513,790 97	8,957,297 08
Educational	8,695,889 00	10,620,112 13
State Prisons	1,883,782 45	2,000,789 78
Canals	3,101,025 90	3,418,875 00
Good Roads		1,215,000 00
	$21,778,738 90	$32,749,983 39

an increase in the items 1901-1902 over 1893-1894 of $10,971,244.49.

If from this we deduct the apparent increase of $9,924,-529.57, the net difference in appropriations for the years of comparison, a difference of $1,046,714.92, is shown in favor of the economy of the Legislatures of 1901 and 1902.

While the appropriations are thus shown to be less, in view of this explanation it may not be amiss to revert to the tax rates, and however much the Legislature may be criticised for maintaining a business-like balance in the form of treasury surplus for unforeseen contingencies and as also illustrating the wisdom of the present Legislature, the following figures speak for themselves:

In 1893 the rate was 2.58 while in 1894 it was 2.18, or .40 mill difference, while in 1901 the rate was 1.20 and the present year .13 mills, and except for the constitutional requirements it would have been nothing. This is a rec-

ord that is unprecedented and without a parallel in the history of the State. To accomplish this result nothing in the tax roll values has been taken from the localities. The bank tax of 1 per cent. imposed by the municipalities to comply with the laws of the United States, all goes to the locality. The real estate of insurance companies and trust companies is still found upon the books of the local assessors, and the fact that the assessments as returned to the State Board of Assessors show no decrease, but on the contrary the same annual increment, is a sufficient answer to the criticism that the State has benefited in its tax laws at the expense of the localities. All these facts are gratifying and it is a sincere pleasure to affix my signature to this bill, believing that the Legislature of 1902 merits the approbation which will doubtless be accorded them by the constituency they have so faithfully represented."

April 16.

Veto of items in Assembly bill, chap. 616, reappropriating certain unexpended balances.

"'The sum of forty-eight thousand and five dollars and eighty-five cents, for establishing electrical communications on the canals, as provided by chapter nine hundred and forty-seven, laws of eighteen hundred and ninety-six, chapter five hundred and fifty-two, laws of eighteen hundred and ninety-eight, and chapter four hundred and seventeen, laws of nineteen hundred.'

This item is disapproved because it is not considered necessary.

'The sum of one thousand five hundred and seven dollars and forty-three cents for the inspectors of steam vessels, for their actual and necessary traveling expenses while in the discharge of their official duties, and for the supplies necessary for the performance of said duties, as

provided by chapter four hundred and eighteen, laws of nineteen hundred.'

This item is disapproved because an appropriation for this purpose is carried in the general appropriation bill."

April 18.

Veto of an Assembly bill entitled "An act in relation to the motive power to be used upon the New York and Harlem Railroad in Park avenue in the city of New York, and the terminals connected therewith," and

Assembly bill entitled "An act to amend the railroad law in relation to additions to or changes in terminal facilities, stations or approaches thereto, railroads, and the structures connected therewith, in cities of the first class."

" These two bills are the outgrowth of a desire to render passenger traffic safe upon the New York Central, the New York, New Haven and Hartford and the Harlem railways. While it is contended by the railroad officials that they have done everything in their power and within the law to properly safeguard the lives of the millions of passengers who traverse these lines yearly, yet public demand has found its expression in the bills now under consideration, the first providing that the use of steam within the Park Avenue tunnel in the city of New York shall be discontinued within three years unless further time shall be granted by the State Board of Railroad Commissioners, and the second, which is in the form of a general law applicable to cities of the first class, aims to give the railroad company the right to acquire by condemnation, purchase or otherwise, such land as it may need in, under and over the streets required for the improvement of its terminal facilities. In the event of a disagreement between the railroads and the local authorities it is provided that an appeal may be taken to the State Board of Railroad Commissioners, and the determination of that Board, sub-

ject to review by the Appellate Division of the First Department, shall be taken as final, both as to route and compensation for the use of the streets within the city aforesaid. In other words, by the terms of the two bills read together, the initiative would be in the city and the final determination in the State Board of Railroad Commissioners. The converse of this unique condition is found in the so-called Pennsylvania tunnel bill where the Rapid Transit Commission has the initiative while the city has the final determination and decision. The reason given for the power conferred upon the Rapid Transit Commission in the Pennsylvania tunnel bill was that under the rapid transit law this commission is constructing a system of subways in the city of New York to be ultimately owned by the city, and that to prevent any interference with their routes and in the construction of their tunnel, it was necessary to give them some restrictive power. When that bill was before me I had serious doubt as to whether it did not confer functions upon the Rapid Transit Commission not originally designed by the law which created that body, but in view of explanations made upon the hearing, I concluded to approve the bill. In this case however the conditions are different. It is conceded that the proposed law can affect but two cities, New York and Buffalo. It is also a fact that the main object of the bill is to permit the construction of a safer entrance into the New York Central terminal and that of its allied companies, in the city of New York. We may therefore consider it as affecting New York City alone.

It may be true that the bill is constitutional* according to a strict legal interpretation, but we should consider the wishes of the citizens and whether the bill has the approval of the locality affected. Human life is of far greater value than a franchise, and whether or not the grant is in perpetuity or whether the remuneration to be given is suffi-

* Const. 1894, art. 3, § 18.

cient, should receive small consideration if that alone were the objection to the bill. But there are numerous considerations which in my opinion render the bill undesirable in its present form. It is to be regretted that the duly constituted authorities of New York did not prepare and submit a bill in a perfect form, but they did not submit such a bill as a remedy; that a remedy for existing conditions is universally demanded is no excuse for signing a measure whose unwise provisions can only be eliminated by subsequent legislative action. The provisions of a law of this kind should be clear and easily understood and it should be impossible to secure rights or undue advantages through technicalities. It is proper therefore under all the circumstances to give heed to the strong condemnation by the public of this act, notwithstanding that the public is so deeply interested in the protection of human life.

There are also numerous railroads whose charters have been the subject of special grant, which under the provisions of this act could take advantage of its features and act independently of the local authorities, the only restraining power being the State Board of Railroad Commissioners. So long therefore as this law should stand upon the statute books, it would be a menace to the cities affected. It strikes me that the only legislation necessary to accomplish the object sought by this bill, is that which relates to the perpetuity of the grant. The city authorities have at present the power of granting a franchise for a period not exceeding twenty-five years. They can also fix the route and the compensation; they can authorize the tunnelling of streets or the opening and closing of streets. In fact, they have almost unlimited power, so that the only legislation necessary to carry out these proposed improvements is that which shall prescribe the motive power and the period of the grant. It would seem from this that, with these exceptions, ample power is al-

ready lodged in the municipality. It should not be given to the State Board of Railroad Commissioners which is a creation of the Legislature and is in fact the Legislature so far as railroad grants in the State of New York are concerned. If this be true, the constitutional prohibition against the granting of rights by the Railroad Commission would seem to render the bill unconstitutional in spirit if not in the letter.

If the necessity for the improvements proposed in this act is so urgent, it would be preferable to reconvene the Legislature rather than to approve a bill which is open to such grave criticism.

The so-called Apgar bill directs the railroad to perform certain work within a stated period of time and the disapproval of this bill renders it impossible for the railroad corporation to carry out that mandate. Therefore in disapproving, as I do disapprove Assembly bill No. 1655, known as the Bedell bill, I feel it my duty also in justice to all concerned to withhold my approval from Assembly bill 1588 known as the Apgar bill."

April 18.

Veto of an Assembly bill entitled "An act to provide for the reorganization of the police department of the City of Rochester."

"This bill seeks to give to the commissioner of public safety of the city of Rochester the right to remove without a hearing certain officials and to dismiss certain members of the detective force known as detective sergeants, and gives authority to appointment, without civil service examinations, of persons to fill the vacancies so created. The condition of the police force in the city of Rochester has been represented to be in need of re-organization. The numerous crimes there committed and the failure to detect them are the reasons advanced for this measure. This statement as well as the fact that I have received numerous letters from some of the most prominent people of Roches-

ter would seem to make it necessary for some action in the re-organization of the police department of this city.

On this point I have no criticism or objection to make but the methods by which this result is sought to be accomplished by this act are open to serious objections, excellent as are the motives of those who advocate it.

While this bill might remedy certain evils in Rochester it is wrong in principle and would establish a precedent for the application of similar methods for purely partisan purposes in other municipalities.

In the first place, there is no necessity for this measure, for the reason that the White charter so-called, which is applicable to cities of the second class, contains ample provisions for the removal of police officials by the commissioner of public safety after a hearing and such removals are not subject to review by the courts.

It is true that upon such hearings it may often be difficult to secure direct testimony as to official delinquency, but on the other hand the large discretionary and wholly irresponsible powers lodged by this act in the commissioner of public safety might easily subject faithful officials to unmerited dismissal.

The law as it stands to-day confers sufficiently large discretion upon that officer and his freedom from review gives him unlimited control over the efficiency and morals of the police force.

The act provides that the detectives in the city of Rochester shall be in the exempt class of the civil service. It has been frequently held by the courts that the legislature cannot classify positions in the civil service; that these functions properly belong under the Constitution[m] in boards that are constituted for that purpose and the only excuse that could be offered for this action would be that they were of such a confidential nature that they should be selected by the commissioner of public safety. If the

[m] Const. 1894, art. 5, § 9.

nature of their duties were submitted to the proper civil service authorities, an exemption of this particular class of employees would undoubtedly meet with their approval, and I therefore think there is no necessity for this particular part of the bill.

For these reasons I have concluded to withhold my approval from the bill."

April 18.

"The following bills remaining in my hands were not approved for the reasons given below.

Assembly bill number 1045, entitled "An act to amend the Greater New York charter by adding a section in relation to franchises of tunnel railroad corporations now or hereafter incorporated for constructing and operating tunnel railroads to connect with other railroads and form thereby a continuous line between a point or points within and a point or points without the city of New York."

This bill and Senate bill number 1269 were both designed to accomplish the same purpose. Senate bill 1269 received the approval of the authorities of the city of New York and at their request it was approved, and is chapter 584 of the laws of 1902. There is no necessity therefore for the bill under consideration.

Senate bill number 1240, entitled "An act in relation to the collection of taxes and assessments and the annual city budget of the city of Mount Vernon for the year 1902."

This bill is disapproved because the provision in reference to banks, trust companies and banking associations, is in conflict with the provisions of the general law on that subject.

The following bill did not receive Executive approval because there was no return to the Executive Department of any action taken by the city, within fifteen days after

the transmission of the same to the city and for the further reason that the bill was not accepted by the city.

Assembly bill number 1168, entitled "An act to amend sections one and fifteen of chapter eighty-four of the laws of eighteen hundred and eighty-six, entitled 'An act to incorporate the city of Jamestown' in relation to the powers of the police, and the care of the indigent sick."

April 18.

"The following bills did not receive Executive approval for the reason that they were not accepted by the cities which they affect."

Assembly bill number 1397, entitled "An act to incorporate the Volunteer Firemen's Benevolent Association of Richmond Hill, New York."

Assembly bill number 1517, entitled "An act to amend the Greater New York charter, relative to assessments by boards of assessors."

Assembly bill number 1693, entitled "An act to amend chapter twenty-five of the laws of eighteen hundred and seventy, entitled 'An act to incorporate the city of Rome' in relation to the powers and duties of the city officers."

Assembly bill number 1083, entitled "An act to amend the Greater New York charter, relative to levying taxes and the collection thereof."

Assembly bill number 1468, entitled "An act to enable the commissioner of docks of the city of New York to reinstate certain persons in the position of dock master in the department of docks, from which such persons were removed without a hearing."

Assembly bill number 1589, entitled "An act to appropriate annually the sum of five thousand dollars for the benefit of the benevolent funds of the volunteer fire departments of the former towns, Flatbush, New Utrecht, Gravesend and Flatlands."

Assembly bill number 1678, entitled "An act to establish and improve a public park, to be known as Hamilton park, in the borough of Manhattan in the city of New York."

Assembly bill number 1040, entitled "An act to authorize the comptroller of the city of New York to audit the claim of the New York Produce Exchange for the expenses and liabilities incurred in the pursuit, capture, extradition and arraignment of William F. Foster, under indictment for felony, and providing for the payment of the same."

Assembly bill number 1067, entitled "An act authorizing the comptroller of the city of New York to audit, allow and pay to Mrs. Mary E. R. Alger, compensation for services actually rendered in the city of New York in the department of education in the years eighteen hundred and ninety-nine and nineteen hundred, as acting supervisor of truancy in said department."

Assembly bill number 728 (Senate reprint 636), entitled "An act to amend the Greater New York charter, being chapter four hundred and sixty-six of the laws of nineteen hundred and one, by inserting a new section after section nine hundred and twenty-nine to be numbered nine hundred and thirty."

Assembly bill number 750, entitled "An act to amend the New York charter, relating to additional justices of the municipal court."

Assembly bill number 977, entitled "An act to release the real estate of the Saint Joseph's asylum in the city of New York from assessments heretofore made."

Assembly bill number 1309, entitled "An act to incorporate the Edgewater fire department in the borough of Richmond."

Assembly bill number 1584, entitled "An act for the relief of John Chiesa, extending his time to file a notice of intention to sue for personal injuries."

Assembly bill number 1128, entitled "An act authorizing the comptroller of the city of New York to audit and allow and also authorizing the comptroller of the city of New York to pay to John G. Diegan compensation for services actually rendered to the city of New York as attendant in the municipal court of the city of New York, borough of Manhattan, eighth judicial dis-

trict, between the tenth day of August, eighteen hundred and ninety-nine, and the first day of February, nineteen hundred, and prior to the classification and preparation of municipal civil service eligible lists for the position of attendants in the said court."

Assembly bill number 238, entitled "An act to amend the Greater New York charter in relation to the authority of the fire commissioners to retire fire captains of fire boats."

Assembly bill number 258, entitled "An act to provide for the levy and collection of assessments for the construction and maintenance of a sewer in the borough of Brooklyn and Queens pursuant to the provisions of chapter nine hundred and ninety-eight of the laws of eighteen hundred and ninety-six."

Assembly bill number 1794, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' in relation to local funds."

Assembly bill number 707, entitled "An act to amend chapter three hundred and forty-five of the laws of eighteen hundred and eighty-eight, entitled 'An act to provide for the relief of the city of Buffalo and to change and regulate the crossing and occupation of the streets, avenues and public grounds in said city by railroads' relative to awards for damages to property."

Assembly bill number 1326, entitled "An act to amend the Greater New York charter relative to police pension fund."

Assembly bill number 1153, entitled "An act authorizing an investigation as to the expediency and cost of establishing a municipal electric lighting plant in and for the city of Syracuse."

Assembly bill number 359, entitled "An act relating to the payment of officers of election in the city and county of New York."

Assembly bill number 579, entitled "An act to amend the Greater New York charter, relative to the department of correction."

Assembly bill number 1405, entitled "An act authorizing the comptroller of the city of New York to audit and allow and in his discretion to pay to certain persons, compensation for services actually rendered to the city of New York as interpreter and attendant in the municipal court of the city of New York,

borough of Manhattan, eleventh judicial district, in the years eighteen hundred and ninety-nine and nineteen hundred prior to the classification and preparation of municipal civil service eligible lists for the positions of interpreters and attendants in the said court."

Assembly bill number 1758, entitled "An act to amend the Greater New York charter relative to the department of docks and ferries."

Senate bill number 786, entitled "An act to amend the Greater New York charter relative to the apportioning of water rents."

Senate bill number 867, entitled "An act to authorize the city of Buffalo to issue its bonds for the purpose of purchasing land as a site on which to erect a quarantine hospital."

Senate bill number 1029, entitled "An act to amend the Greater New York charter relative to places of public amusement."

Senate bill number 871, entitled "An act to authorize the city of New York to appropriate money for the care, support, maintenance and secular education of the inmates of any institution by the Jewish Protectory and Aid Society."

Senate bill number 430, entitled "An act to authorize the repayment of penalties to certain banks in the city of New York."

Senate bill number 748, entitled "An act to correct errors in the assessment of bank shares in the city of New York during the year nineteen hundred and one."

Senate bill number 406, entitled "An act to amend chapter eight hundred and sixty-five of the laws of eighteen hundred and ninety-five, entitled 'An act to provide for the establishing and maintaining of a law library for the court of general sessions of the peace of the city and county of New York.' "

Senate bill number 1177, entitled "An act to amend chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, known as the Greater New York charter, as amended by chapter four hundred and sixty-six of the laws of nineteen hundred and one, relative to appeals from the decisions of the superintendent of buildings in and for the various boroughs of the city of New York, regarding the mode, manner of construction or materials to be used in the erection or alteration of buildings."

Senate bill number 905, entitled "An act to amend the Greater New York charter, in relation to qualifications of patrolmen and firemen."

Senate bill number 645, entitled "An act to authorize the payment of the claim of James A. Russel for services rendered the city of New York."

Senate bill number 573, entitled "An act to amend section ten hundred and six and section ten hundred and nineteen of chapter four hundred and sixty-six of the laws of nineteen hundred and one, entitled 'An act to amend the Greater New York charter, chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, entitled "An act to unite into one municipality under the corporate name of the city of New York the various communities lying in and about New York harbor, including the city and county of New York, the city of Brooklyn and the county of Kings, the county of Richmond and part of the county of Queens and to provide for the government thereof,"' relative to interest on unpaid assessments."

Senate bill number 834, entitled "An act to amend the Greater New York charter, relative to a zoological garden in Prospect park, borough of Brooklyn."

Senate bill number 1203, entitled "An act to amend chapter five hundred and twenty-two of the laws of eighteen hundred and ninety-nine, entitled 'An act in relation to an assessment for the grading, construction and improvement of Surf avenue in the city of New York, late town of Gravesend, Kings county.'"

Senate bill number 1133, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo' and the acts amendatory thereof and supplemental thereto in relation to the collector or collectors of unpaid taxes and assessments."

Senate bill number 627, entitled "An act to create and establish a firemen's relief and pension fund for the paid fire department of the city of Utica and authorizing the granting and payment of pensions and relief to the officers and members of said department entitled thereto."

Senate bill number 1185, entitled "An act to authorize the board of education of the city of New York to place certain retired teachers on the pension or annuity list."

Senate bill number 767, entitled "An act to provide for the division of the expense of acquiring title to, widening and improving White Plains avenue in the borough of the Bronx, city of New York, between the owners of the property deemed benefited thereby, and the city of New York."

Senate bill number 1012, entitled "An act to enable the commissioner of docks of the city of New York to reinstate certain persons in the position of dock master in the department of docks and ferries, from which such persons were removed without a hearing."

Senate bill number 434, entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow and also authorizing the comptroller of the city of New York to pay to certain persons compensation for services actually rendered to the city of New York in the department of board of education in the year 1900."

Senate bill number 370, entitled "An act to amend chapter five hundred and eighty-three of the laws of eighteen hundred and eighty-eight, entitled 'An act to revise and combine in a single law all existing and special laws affecting public interests in the city of Brooklyn,' as amended by chapter seven hundred and two of the laws of eighteen hundred and ninety-seven, as amended by chapter five hundred and eighty-three of the laws of nineteen hundred, as amended by chapter thirty of the laws of nineteen hundred and one, relating to the department of parks."

Senate bill number 693, entitled "An act authorizing the commissioners of appraisal or commissioners to ascertain the compensation to be made to the owners for the property taken for the public use, specified in chapter seven hundred and eighty-nine of the laws of eighteen hundred and ninety-five, and the acts amendatory thereof, to make and submit to the supreme court from time to time reports of their proceedings and appraisals."

The following bills are not approved because there was no return to the Governor by the cities which they affect within the time limited by the Constitution:

Assembly bill number 1449, entitled "An act to amend chapter one hundred and twenty-eight of the laws of eighteen hundred and ninety-nine, entitled 'An act to incorporate the city of New Rochelle,' relative to the retirement of teachers by the board of education."

Assembly bill number 1550, entitled "An act to amend chapter one hundred forty-three of the laws of eighteen hundred ninety-two, entitled 'An act to incorporate the city of Niagara Falls,' relating to powers of and contracts by the board of public works."

Senate bill number 1002, entitled "An act to amend chapter four hundred and seventy-eight of the laws of eighteen hundred and ninety-three, entitled 'An act to incorporate the city of Olean,' in relation to the powers of mayor."

Senate bill number 783, entitled "An act to amend chapter five hundred and seventy-seven of the laws of eighteen hundred and seventy-five, entitled 'An act to revise and consolidate the several acts relating to the public schools in the city of Auburn,' and the several acts amendatory thereof."

See also omnibus veto of April 11.

THE RECEPTION OF PRINCE HENRY.

Acting on the suggestion in the Governor's special message of February 5, *ante*, p. 375, the Senate on the 10th of February adopted the following resolution, which was concurred in by the Assembly on the 11th:

"*Whereas*, Prince Henry of Prussia is shortly to arrive in the United States as the official representative of a foreign power, with which this nation is on terms of concord and friendly intercourse, and

Whereas, It is fitting and proper that the Empire State should extend to the visiting Prince its courtesy and hospitality, therefore,

Resolved, That a joint committee of the Senate and Assembly, consisting of five Senators to be named by the President of the Senate, and seven Assemblymen to be named by the Speaker of the Assembly, be appointed to act in conjunction with the reception committee heretofore appointed by the mayor of the city of Albany for the purpose of receiving Prince Henry of Prussia, upon the occasion of his visit to the city of Albany."

The Senate members of the committee were Horace White, Elon R. Brown, Rudolph C. Fuller, Joseph Wagner, Samuel J. Ramsperger; and the Assembly members were Jotham P. Allds, Otto Kelsey, William L. Coughtry, William Schneider, James M. Graeff, George M. Palmer, Gotthardt A. Litthauer.

Prince Henry of Prussia was received by the Senate on the 7th of March, when he appeared in the Senate Chamber, accompanied by his staff and the committee of the Senate appointed to receive him. The President (Lieutenant-Governor Timothy L. Woodruff) escorted the Prince to the President's desk and addressed him as follows:

"It is a high official privilege and a very great personal pleasure to present the Senate of the foremost commonwealth of the American republic to His Royal Highness, Prince Henry of Prussia, whose diplomacy and cordial good-fellowship have achieved a peaceful conquest of the United States equal to any of the historic victories won by the sword of the House of Hohenzollern in the lands beyond the seas."

Prince Henry responded, in the following words:

"I wish to thank you most heartily for the kind reception met with here. It is one of the many acts of kindness which I have received during my stay in the United States, at the hands of your countrymen, and which I am not likely to forget."

The Prince was then received by the Assembly in the Assembly Chamber. According to the Journal he was preceded by Adjutant-General Nelson H. Henry and James G. Graham, Secretary to the Governor, Archie E. Baxter, Clerk of the House, announced from the back of the chamber:

"His Royal Highness Prince Henry of Prussia."

The Prince walked in, on the right of Assemblyman Allds, the leader of the majority of the Assembly. Admiral Evans and Adjutant-General Corbin followed. After them in this order were: Ambassador von Hollenben and Assemblyman Kelsey, Admiral von Tirpitz and Assemblyman Palmer, General von Plessin and Assemblyman Coughtry, Admiral von Seckendorff and Assemblyman Schneider, Admiral von Eisendecher and Assemblyman Graeff and Admiral von Baudissin and Assemblyman Litthauer.

Everybody in the chamber and galleries rose to their feet as the Prince entered and remained standing till the Prince had gone.

The Prince was escorted to the Speaker's desk by Speaker Nixon. The members of his suite, the President's delegates and the Assembly reception committee stood in the well of the House.

Speaker S. Frederick Nixon, addressing the Prince, said:

"YOUR ROYAL HIGHNESS.— It is a privilege and pleasure on the part of the Assembly of the Empire State to extend to you a most kindly and cordial greeting. Your visit affords us especial pleasure, as it indicates to us in a most generous manner the feeling of good will and friendship existing upon the part of your nation toward ours. That this same feeling of friendship exists upon our part you can have no better evidence than is indicated to you daily by

the grand ovations you are receiving from the American people. Some of the members of this body were born in Germany, others were born of German parentage, while others have perfected their education in German universities, to whom your coming is an especial pleasure, but all welcome you cordially as American citizens and representatives of this Empire State.

We also extend through you our especial greeting to your imperial brother, the Emperor of the great German nation and trust you may convey to him a report of interesting and enjoyable experiences here which shall long remain as a pleasant memory.

Without consuming too much of your limited time, I beg leave to present to you the members of the Assembly."

The Prince replied:

'I can only repeat to you gentlemen, what I said five minutes ago. And it is absolutely true what you say of the ovations which I have received during my stay in the United States. I am perfectly aware of the fact that your nation means it well with ours. And all I can do is to report to his Majesty the Emperor the kind manner in which I have been received, not only here, but during my stay in the United States; that I am deeply grateful for it and not likely to forget it.'

The Prince and his suite then retired.

BENJAMIN B. ODELL, Jr., Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK,

EXECUTIVE CHAMBER,
ALBANY, N. Y., *January* 7, 1903.

TO THE LEGISLATURE.— No Legislature in recent years has had before it for consideration such important problems as you will be called upon to solve at the present session. Internal improvements, the abolition of direct taxation, the betterment of our common school system, and the popularization of the higher branches of education, are subjects meriting your most careful consideration, and the enactment of laws which will secure the best results with the least possible expenditure of the public money.

The State's debt is small, but if all the improvements which are under contemplation shall be approved by the people, it will be largely increased, and if left to a direct tax for liquidation will be so great as to materially add to the burdens of every locality. The aim of recent legislation has been to devise a uniform system of indirect taxation, and all of the changes in our revenue laws during the past twenty years have been in this direction, with the result that since the passage of the original corporation law in 1880 these receipts have grown from $141,127.03 to $16,236,446.99, which includes the special tax for judges and stenographers.

There is an impression that the benefits of indirect taxation have been secured at the expense of the larger centers

of population. Nothing could be further from the truth than this, because it can be shown that if all such receipts were to go to the localities from which they come and recourse had to a direct tax for the monies necessary for the State's maintenance, the amount collected from the larger localities would be considerably greater than under the present system. As an illustration of the truth of this statement, it may be cited that during the year ending September 30, 1902, of the total indirect receipts the city of New York contributed:

From transfers	$2,286,962 23
From excise receipts	2,782,082 87
From corporation taxes, including trust companies and savings banks	3,537,143 00
Total	$8,606,188 10

which is practically 56.6 per cent. of the total. In addition, New York paid this year in direct taxes $496,954.99, so that the gross cost to the city was $9,103,143.09. If the appropriations for the years 1902–3, amounting to $21,996,905.93, were raised entirely by direct taxation, New York city's proportion would be 67 per cent, which is its percentage of the total assessed valuation of the State, and it would be called upon to pay $14,736,926.97, or $5,633,783.88 more than it does to-day. Erie county paid $465,483.46, but two and nine-tenths per cent. of the indirect revenues, which added to its direct tax of $39,244.12 makes a total of $504,727.58; while its proportion of a direct tax, it having five and two-tenths per cent. of the assessed valuation, would be $1,143,839.10, or $639,111.52 more than under the present system. It may be claimed that inasmuch as the revenues are $5,760,458.94 short of the appropriations, to make a proper comparison the percentages of this deficiency should be deducted from the savings herein referred to, which in

the case of New York would be $3,859,507.48, and Erie county $299,542.95; but even then the benefit of indirect taxation is shown in New York to be $1,774,276.40 and in the other case $339,568.57. In addition to this it must not be lost sight of that both Buffalo and Greater New York receive from the State monies for school purposes, the former receiving for this year $195,567.78, or $156,323.64 more than it paid in direct taxes; while the latter receives $1,302,126.47, which is $805,171.48 greater than the amount of its direct contribution to the State. In addition to this the local treasury of New York has been benefited by $4,166,492.59, and Erie county by $654,641.31 by reason of the increased revenues for the year 1902 from excise receipts over the last year of the operation of the old law. All this has been practically accomplished without any reduction in the assessment rolls of the municipalities affected. So that from every standpoint of benefit it will be seen that these laws have not only enabled us to maintain the State with the least possible burden upon the localities, but that they have also greatly aided in meeting local expenses.

The total receipts into the State treasury, including the balance of $9,789,351.16 for the year ending September 30, 1902, were	$33,450,126 59
The total payments for all purposes	23,220,272 68
Leaving a balance of	$10,229,853 91

Divided among the various funds as follows:

Canal fund	$1,388,490 99
School fund	511,670 83
General fund	8,140,046 11
Trust and miscellaneous fund	189,645 98
	$10,229,853 91

The actual surplus, after deducting all appropriations made prior to January 1, 1902, was $8,001,346.56.

The total debt of the State is $9,920,660, of which $255,000 falls due during the current year.

The expense for educational purposes during the past year was $5,367,016.85. The amount for charitable purposes including the care of the insane, was $5,451,817.32, and for betterments and buildings $1,351,944.83, making a total of $6,803,762.15.

I estimate the receipts from all indirect sources of taxation for the current year at $16,500,000, which added to the present surplus makes $24,501,346.56 as available balance, from which should be deducted the sum of $21,780,915.93, the amount of the appropriations made by the Legislature of 1902, exclusive of the special tax for stenographers and extra compensation for Supreme Court judges, leaving an estimated surplus on October 1, 1903, of $2,720,430.63.

The estimated indirect income for the year ending September 30, 1904, is $17,000,000; and assuming that the appropriations for that year are $23,000,000, there will be an apparent shortage of about $3,280,000, even though the entire surplus were used for the payment of appropriations. From these figures I estimate that new revenues amounting to $5,500,000 are necessary, and it becomes our first duty therefore to provide ways and means for this increase.

In imposing any additional taxation due regard must be had for the rights of individuals, corporations and the localities. It is a well-known fact that notwithstanding the constant reduction in the direct taxes of the State there has been a very great increase in local taxation, and therefore whatever is intended to increase the State's revenue should not be at the expense of increasing local burdens. It has always appeared to me to be dangerous to lodge power in any taxing officer which permits him to discriminate in the levying of assessments, and that the nearer therefore we

can approach a system which has for its object a constant valuation, the nearer we are to a perfect system of taxation.

The Franchise Tax, which is still the subject of litigation, seems to me through the few years that it has been in operation to have demonstrated that it is inequitable, and a source of annoyance and constant litigation. Some corporations can bear this burden without serious results following. But as is well known, the continued increase of street railroad traffic and the demands for lighting, water, telephone and other public utility facilities have perhaps brought into existence many corporations which cannot bear the excessive burden which is now imposed under the present law.

Under the operation of the Franchise Tax Law it was sought to impose upon all those using streets and highways a greater tax for the privileges thus accorded. There is a great misconception however as to the results produced. A single corporation in the boroughs of Manhattan and the Bronx has seven-sixteenths of the total valuation of such properties in these two boroughs. This corporation is paying as much tax as many great railroad systems. By provisions of the law it is entitled to deductions because of car licenses and percentages paid to the city — at least so the law was interpreted until a recent decision of the court in a case in Buffalo, which held that such tax should not be deducted.[a] The increase in receipts under this law upon the one hundred and sixty-seven millions of franchise valuations in Manhattan and the Bronx, after making all allowances for the tangible properties in the streets and the deductions ordered by the courts of one-third of the total assessment, are four hundred and thirty thousand dollars of new revenue. If this same proportion were carried out therefore in the city of New York it would mean an added

[a] See Heerwagen v. Crosstown St. R. Co. (1904), 90 App. Div. 275.

revenue to the local treasury of $860,000. The State has accorded to every locality the power to enter into contracts for all franchises which may be granted, and it seemed to me at the time of the enactment of this measure that ample provision was possessed by the cities to properly guard and protect their interests and that to surrender therefore what should belong to the State to the municipalities — that is, franchise rights — was unnecessarily giving away powers which should belong to and which are inherent in the State. With corporations as with individuals we should be fair, and while perhaps these corporations had not been paying the proportion which they should, still whatever is of value for a franchise should be paid for to the State, because it creates the corporation; while for the use of the streets there should be a direct contract between the company seeking such privileges and the municipality affected. I am of the opinion also that under the present law those who might desire to use the powers possessed for taxing purposes could do so to the great disadvantage of almost any corporation or with resultant unfairness to the municipalities affected. It seems to me, therefore, that the only safe and conservative way of assessing such corporations is upon their earning capacity, a plan which would not permit unfair discrimination. This would avoid many complications and would be a much safer system than the one now in operation.

The present method of mortgage taxation is unfair because it reaches only a small proportion of the whole, and permits an excessive tax. Whatever may be the reasoning as to the propriety or justice of imposing such a tax, the experience of other commonwealths has demonstrated beyond any question or doubt that the tax upon mortgages must be paid by the borrower and, therefore, to that extent it becomes double taxation. We must consider, however, the disinclination of local assessors to relieve those who loan money, upon the theory, in which there is much justice,

that if mortgage taxation were entirely abolished a greater burden would be imposed upon real estate free from mortgage debt. This subject presents many peculiar conditions, and, while some hardships may be imposed, it is well for us to understand that it will be impossible to entirely relieve from the ultimate cost of borrowing those who are unfortunate enough to have their houses or lands burdened with mortgage. We have endeavored to protect the borrower, however, by fixing a maximum interest rate. The cheapness of money has reduced this rate, and whenever the lender of money is satisfied that his rate of interest will be as large as he can secure upon collaterals upon which no tax is due, he will loan upon real estate and millions of money that is now invested in other directions will immediately become available for investment in real estate mortgages. We may assume, therefore, that while it is impossible at the present time to entirely eliminate some form of taxation upon mortgages wherever found that we can still satisfy the localities by a more equitable distribution of the tax and thus bring about a lowering of the tax, with the natural sequence a lowering of the interest rate. Whatever tends to correct an abuse in part is in the direction of equity and justice, while not fully satisfying every demand. In view, therefore, of the failure to secure some such equitable form of mortgage taxation through the opposition of those who felt that their local assessment rolls would be decreased and a greater burden of local taxation placed upon real estate, we should not attempt to correct the evil entirely because failure would again result. Whatever of injustice has been done, or whatever of inequality is apparent, can be well considered when the subject of indirect revenue is under consideration. And in framing new laws we can avoid errors which produce hardship by exacting unjust tribute. It appears to me, therefore, that in providing new revenues advantage should be taken of a more

liberal mortgage tax and the reassumption of privileges which were surrendered to localities under the so-called Franchise Tax Law.

I recommend therefore that the rate of taxation upon mortgages shall not exceed four mills annually, and be in lieu of all other taxes, the mortgages to be assessed locally, two-thirds of the amount collected to go into the local treasuries and one-third to the State, excepting only from the operation of this law mortgages and bonds held by savings banks, fraternal orders, local building and loan associations, life insurance companies and charitable, religious and educational bodies. This law would produce as near as can be estimated eight millions of dollars annually, two-thirds of which, amounting to about $5,350,000 would go to the localities and $2,650,000 to the State. The local machinery for the collection of the tax will be much simpler than a State bureau because it will be the local registrar's and county clerk's offices that will furnish the desired information to each locality to determine its assessment, leaving to them the corrections and deductions which should be made. The constant fear that mortgages will be subject to excessive or varying rates of taxation will be thus eliminated and borrowers and lenders can negotiate their loans with a sure knowledge of the tax obligation.[1]

Bonds of corporations, owing to the difficulty of reaching them for taxing purposes, can be left for assessment under existing law. The Franchise Tax Law should then be amended so that a tax could be assessed upon gross earnings, at double the present State tax, the revenue to be paid direct to the State, relieving public utility companies from local taxation, except upon tangible property in the streets, and other real and personal estate. This will operate much more equitably than does the present law,

[1] A mortgage tax bill was introduced in the Senate, but it was not passed. A mortgage tax law was passed in 1905, chap. 729. It was amended in 1906, chap. 532, in 1907, chap. 340, and in 1908, chap. 296. This subject was included in the tax law, which was reenacted in 1909, chap. 62, as a part of the Consolidated Laws.

and will not be an unjust burden upon the corporations that are affected.[2] I estimate that from the mortgage tax and the amended Franchise Tax Law the increased revenues will amount to $3,530,000. Whatever may be lost in the total of the assessments under the Franchise Tax Law can be more than replaced by the listing of mortgages, and would therefore increase rather than decrease the debt limit of municipalities for bond issues.

For further revenues I recommend a tax of ten cents on each notary certificate, which will produce $750,000, and a tax of ten cents per hundred dollars for the recording of all transfers of property, real or personal, to be known as a recording tax, which from the best available data at hand will produce $1,200,000 annually, making the total result $5,480,000 in new revenue.[3] These recommendations, if enacted into law, will produce enough funds for the present and the constant increase of receipts under their operation will be sufficient to care for the increased expenditures of the State outside of canal improvement, and will thus redeem the pledge that has been made for entire relief from direct taxation for State purposes.

The enactment of these laws would take away from the localities franchise revenues of $1,325,000. Inasmuch as of the total assessed valuation of the personal property of the State, from the best estimates obtainable, there is only $135,000,000, in the hands of individuals, and assuming that all this represents mortgages and that the tax were two per cent, the localities would lose $2,700,000 by the abolition of the present mortgage tax, so that the total loss would be $4,025,000, while the new income from the

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[2] In 1906 an act was passed, chap. 474, amending the provisions of the Tax law, section 182, relative to the method of assessing a franchise tax on a corporation. The section was reconstructed and the regulations contained in it relative to this form of taxation were materially modified.

[3] In 1905, an act, chap. 241, was passed providing for the taxation of the transfer of stock. The act was sustained in People ex rel. Hatch v. Reardon, 110 App. Div. 821, affirmed 184 N. Y. 431.

mortgage tax would be $5,350,000. In other words, the localities would benefit by the enactment of these laws to the extent of $1,350,000, and it would still leave bonds and securities other than real estate mortgages held by individuals to be taxed locally.

I know that there may be perhaps a prejudice against the changes thus recommended, but we should not for that reason be deterred from according rights and protecting all interests equally so that unfair burdens may not be imposed. I believe when the subject is fully understood that the Legislature will reach the conclusion that the law as it stands to-day is unwise and against public policy. Stockholders are but individuals and they should have the same rights as owners of real estate or other forms of personal property.

The desire to maintain the commerce at the ports of New York and Buffalo, and the failure of canal transportation to adequately meet the demands of trade have led those who have given consideration to this subject to suggest a very material increase or enlargement of canal facilities. There is perhaps no subject which you will be called upon to consider that is fraught with so many difficulties, and the failure of every attempt in recent years to make canal traffic more effective should be a warning, and should preclude hasty conclusions as to the proper remedy to be applied.

That the Erie canal has performed an important work in the development of our State is not questioned. That it is the desire of all of the people that it should remain as a factor in the adjustment of freight rates is equally true. But as to the extent to which the State should go in the direction of improvement, there is a wide divergence of opinion. There has been, unfortunately, no policy in this matter which had the character of permanence. Neither the lowering nor the abolition of tolls upon the canals brought, as was hoped, an increase of traffic. On the con-

trary, there has been a gradual but certain decrease, both in tonnage and in the number of boats engaged in canal traffic. Under the present system, disregarding for the time being the factor of cost which the State in the nature of a subsidy grants, the fact is apparent although the per ton mile cost of canal transportation is but nineteen one-hundredths of a cent, while upon the railroads fifty-nine one-hundredths of a cent, that the railroads are increasing their traffic while the canal is gradually losing it. Why shippers are willing to pay this increased cost becomes therefore a proper subject for inquiry. Is it because of greater facilities and more prompt shipment at other outports that this decline in canal traffic is due? And will an enlarged canal win back the commerce which we have lost? It can be taken to be a certain and fixed conclusion that commerce will follow the line of least resistance, where the cost is lowest and where facilities for reloading freight for export are best. The inability to use the canal for at least five months of the year to my mind is first of all a serious consideration in competition with railroad transportation, which in addition to the terminal charges at New York and breaking of bulk at Buffalo seem to give to the railroads an advantage which should be thoroughly considered before an enlargement of the canal is authorized. Still lower freights seem to be the remedy which it is hoped may restore this inland commerce. This can be accomplished in one of two ways, either by greater speed upon the canal or increased carrying capacity of the boats. If it is possible to accomplish the desired results through either of the methods suggested, I am convinced that by reason of the decreased cost we can exact a toll which, while in no way interfering with the use of the canal, would assist in its maintenance and in the payment for the improvement. I have endeavored to give to this subject the consideration which its importance demands, and have heretofore expressed myself and now reaffirm

my belief in the thousand-ton barge plan. I cannot urge too strongly upon the Legislature the necessity for immediate attention to this important problem, and while recommending that every consideration shall be given to the various interests involved, we should recollect that above every other claim the prosperity and upbuilding of our State are foremost. While giving all weight to the expense involved, we should not be deterred from any expenditure that will hold the supremacy of which we are all justly proud. I hope that the conclusion reached may be so supported by data and figures that there shall be no dissent from the deductions which are thus arrived at, and that the people may be put in possession of every detail that is necessary to enable them to speedily pass upon and express their approval or disapproval of the plans to be submitted.

In my last message I advocated the deepening of the canals to a nine-foot level with locks capable and large enough to provide for one thousand ton barge tonnage. To this subsequently suggestions were added that both the Oswego and the Champlain canals should be equally enlarged. This proposed measure failed of passage, I am convinced, because of an honest belief upon the part of many members of the Legislature that the plan proposed was inadequate to meet the requirements of commerce. At the time of the submission of the nine million dollar plan it was generally conceded by those interested in canal traffic that a nine-foot canal would be adequate to meet all demands. The failure of that sum to complete the improvements, led to the appointment of a commission by my predecessor, which commission submitted a plan for the thousand-ton barge canal, and to that project the commercial bodies of New York and Buffalo stand committed in the belief that no other remedy will produce the desired results, while the interior cities and others who are affected are as earnest in their opposition of the larger

plan, and are as firmly convinced that a canal completed along the plan of the nine-foot level will be sufficient for all requirements. Therefore the friends of the canal, while united in the greater cities, are at odds in other sections of the State over the amount of expenditure which the Commonwealth should authorize for the completion of this important work. So far as the thousand-ton barge canal is concerned, I had thought that the route known as the Oswego, Ontario and Olcott at a much less cost would be sufficient for all purposes and would secure the result desired much more speedily than the so-called interior route. Those who have given the Lake Ontario, Oswego and Olcott plan study, are firmly convinced, however, that it is impracticable, and that at the time when the canal traffic would be at its heaviest, it would be impossible because of adverse winds and dangers of navigation. So we are forced to the conclusion that the only practical route for canal traffic for a thousand-ton barge would be along the more expensive line which can only be built at a cost under the State Engineer's estimate, and assuming that the bonds were for fifty years and the interest at three per cent, of $193,980,967.50, principal and interest. This plan only contemplates the deepening of the Champlain canal to seven feet, but the advocates of canal improvement now desire that it should also be deepened to a twelve-foot level, which would increase the cost to $215,000,000. It is well known that no great undertaking of this character ever was completed within the engineer's estimate, but owing to increase in the cost of labor and material there should be a factor for safety of at least twenty per cent more, which would make a probable ultimate cost for construction of over $255,000,000 in principal and interest, from which should be deducted the interest of the sinking fund. Suggestions have been made, and it is but fair that they should be presented to you, that if the canal were enlarged to a nine-foot level and by the use of the water

powers of the State and by the introduction of electric motors that not only the same object could be accomplished, but that sufficient revenue could be derived from the sale of power to almost maintain the canal. The cost of electric equipment and providing water power would be much less than under the thousand-ton plan, and perhaps would accomplish the same results. If this be feasible I am sure that all who are interested in the welfare of the canals would be glad to give it consideration. If this plan should be adopted, the canal could be constructed within two or three years and the constant withdrawal of commerce could be checked much more rapidly than under the thousand-ton-barge plan and it could be provided for under the present Constitution. The former would require an amendment. If it should be deemed wise to select the thousand-ton-barge plan, it could be submitted to the people this fall under the eighteen-year bonding clause of the Constitution, and no work performed until the adoption of a constitutional amendment extending the time of payment. In the event of a refusal by the people to so amend section 4 of article 7 under the same section the Legislature can repeal or render inoperative the expenditures authorized and thus safeguard against excessive taxation, which would be required for the improvement. In the event of the thousand-ton-barge plan being authorized, I would recommend the adoption of a concurrent resolution providing for the reimposition of limited tolls, which would perhaps produce revenue enough to provide for the maintenance of the canal, believing that the lowering of the freight rates would be so great that a tollage could be easily met without interfering with the results which it is hoped to accomplish under this plan. The money for payment of principal and interest of the debt could be met by a dividend tax upon all capital stock of manufacturing corporations, which would produce about $2,400,000, and by modifications of existing revenue laws

by slightly increasing the rates affecting others than corporations. But as it is not necessary to provide this revenue until the plan shall be approved by the people, there is no immediate necessity for the consideration of this part of the problem other than the adoption of a resolution for the reimposition of tolls,* which must be by constitutional enactment.[4]

Important changes were made at the last session of the Legislature in the law relative to the institutions for the insane, which were, first, the substitution of boards of visitors for the old boards of managers; second, the centralization of all powers in the Commission of Lunacy, the details of management as heretofore being left with the superintendent.

The changes made in the government of the charitable institutions of the State were the creation of a new office known as the Fiscal Supervisor, whose duty it should be to investigate and supervise all financial transactions of this department, the management being left in the boards

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* See Const. 1894, art. 7, § 9.

[4] An act, chap. 147, was passed April 7, which provided for the construction of a thousand-ton barge canal or canals at a cost not exceeding $101,000,000. The act was to be submitted to the people for approval at the general election in November, 1903.

The proposed enlargement included the Erie, Oswego and Champlain canals. As enlarged they were to have a bottom width of 75 feet, an average surface width of about 120 feet, and a depth of 12 feet. The act provided for a change of route in several places, and a sale of abandoned canal lands. It imposed an annual tax of twelve-one-thousandths of a mill. The act also authorized the Governor to appoint five expert civil engineers, to act as an advisory board of consulting engineers, and to advise the State Engineer and Superintendent of Public Works in relation to the construction of the new canals.

The act was approved by the people by a vote of 673,010 to 427,698, making a majority of 245,312.

A resolution was also adopted by the Legislature at this session to amend the Constitution, article 7, section 4, by extending the debt period from eighteen years to fifty years. The amendment was again adopted by the Legislature of 1905, and was approved by the people at the general election in that year.

of managers as heretofore; second, the creation of a commission consisting of the Governor, the State Comptroller and the President of the State Board of Charities, whose approval should be necessary to all plans and specifications for new buildings or additions.

In the administration of this important part of the State work above everything is to be considered the physical and medical treatment and care of its wards. No change would nor should meet with approval that sought to effect economies at the expense of the health or the comfort of the inmates of our institutions. Too much sentiment, however, is as undesirable as too much economy, but there can be a happy medium which will be satisfactory to those interested in charitable work and who regard any innovation with distrust and disfavor, as well as to those who believe that the administration of all of the State departments should be upon strict business lines.

Some features of the administration of the Department of Lunacy have always been undesirable, and extravagances existed which did the patients no good and which accomplished nothing in the direction of cures. It was to correct this that the amendments to the laws were recommended. The wisdom of these changes has been shown by the results produced. A more liberal allowance in measuring accommodations has been adopted than heretofore; an extension of the system of joint purchases has been followed with resultant economy, and while in no way depriving the localities in which these institutions are situated of the privilege of supplying goods, it must be done after competitive bidding and local influences in these matters have been eliminated. The monthly reports of the Boards of Visitation which the law provides for have brought to the attention of the Commission in Lunacy and the Governor at once the necessity for repairs or for the correction of conditions which need immediate remedy, and have prevented delays which frequently resulted under

the old management and which produced discomfort to the patients. The new law has also had the effect of separating the medical from the business administration of the institutions. It has saved the State, through the abolition of the treasurers and other features of administration, about $20,000 per annum. It has limited the cost of new buildings to $450 per capita, which is considered ample by the State Architect. But above all, the entire responsibility for the administration of these institutions has been absolutely fixed in the State Commission in Lunacy. The boards of visitors consist of devoted men and women and they show great interest and intelligence in the performance of their duties. There is more marked efficiency and more devotion to the work than existed under the old boards, whose members did not believe that it devolved upon them to criticise their own appointees. Not being so embarrassed the boards of visitors criticise intelligently and in a manner to bring speedy relief. All complaints have been promptly investigated and the recommendations made have been acted upon favorably so far as possible. More food is allowed, and in every way possible attempts have been made to raise the standard of administration. There have been fewer recoveries during the past year, the total for 1901 being 1,209, and for 1902, 1,125. The physicians when asked for the reason for this apparent decrease in the rate of recovery state that it is because a different class of patients is being received in the institutions. In other words, that the local hospitals are treating acute cases of insanity with considerable success, thus relieving their relatives from the necessity of placing them in the State asylums. The physicians in charge at the Hudson River Hospital, and Binghamton Hospital, say that in their particular institutions, where all of the decrease practically occurs, the class of patients which they are receiving almost debars hope of recovery. The physician at Binghamton says: "It is difficult to determine

exactly the cause of the lower percentage, but it is undoubtedly due in part to the advanced age of many of the patients admitted, and in part to climatic conditions which were not as favorable as usual. If we eliminate from consideration the patients who on account of the length of duration of mental disturbance prior to admission, or who because of extreme old age, were presumably incurable at the time they came under treatment, the percentage of recovery will be seen to be much more favorable." The physician in charge at Poughkeepsie expresses the belief that by reason of the opening of the insane pavillion in connection with the Albany Hospital, and the treatment and cure there of a great number of recent and acute cases which formerly were committed directly to him, the quality of the patients as regards recoverability has been markedly decreased. This consideration has led the Commission to suggest that at New York there shall be a similar hospital provided, so that such acute cases can receive not only the attention of the physicians who are employed by the State, but of the distinguished alienists residing in the metropolis. That the average number of patients admitted to the hospitals would be thereby considerably lessened and the cures increased is certain, and with this recommendation I am in hearty accord.[5] The health of the patients, however, has been very much improved. Notwithstanding the fact that there were six hundred more population during the past year, the number of deaths has been sixty less than the preceding year. To sum up the situation, the percentage of cures while less than in 1901, is quite equal to the average of the six years preceding, and markedly in excess of the rate of some of these years, while the death rate has been lower. The increase in the insane population will

[5] Chapter 146, passed April 6, amended the Insanity law, section 62, by adding a provision for the temporary commitment of insane persons to State institutions for a period not exceeding five days pending an examination as to the necessity of a permanent commitment.

ultimately require the establishment of another hospital,[6] but for the present the following suggestions are made: The expenditure of $225,000 in separate buildings for the superintendents and medical staffs at Poughkeepsie, Utica, Buffalo, Binghamton, Rochester and Gowanda; by the establishment of tuberculosis hospitals at six of the institutions at an expense of $90,000, the danger of communicating this disease to other inmates can be averted; by erecting a home for the nurses at Kings Park at an expense of $54,000, and by the expenditure of $150,000 at Bedford Reformatory and by transfer of its inmates to another institution, which I shall speak of farther on, a total of 2,670 beds at an expenditure of $519,000, an average per capita cost of $194.44 can be provided which would care for all the patients during the next two or three years and would save $682,500 in the accommodations furnished.

The only change that has been made in regard to the charitable institutions, as has been stated, was in the direction of conferring authority upon someone whose sole duty it would be to supervise their financial administration and who should have power to suggest and perfect some system similar to that which has so greatly reduced expenditures in the Department of Lunacy, and to take advantage of existing conditions for the employment of the inmates. There is no reason why the farms connected with some of these institutions should not aid in supplying food and other necessary articles which are required for use in other State asylums. The State prison industries cannot furnish all of the manufactured articles that are necessary, and frequently the State is obliged to make purchases of such goods in the open market. Of course there is no desire to

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[6] By chapter 54, passed May 11, the State commission in lunacy was authorized, with the approval of the Governor, to select a site for a State hospital for the insane at some place in the northeastern part of the State north of Rensselaer county. The act appropriated $50,000 for the purchase of land, the expenses of the commission and plans for hospital buildings.

interfere with any industry in which free labor is employed, but inasmuch as it has been the policy of the State to provide, so far as possible, for its own needs, it would seem to be desirable that some action should be taken to make effective the labor in these homes, which, aside from other considerations, would be for the benefit of the inmates themselves.

There are three asylums for the reformation of girls and women; one at Bedford, one at Hudson and the other at Albion. The present population of these three institutions could be easily taken care of at Hudson and Albion. If the law were so amended that only those who had taken the first step in crime, rather than frequent offenders as well, should be committed to these institutions, much better results would follow from the standpoint of reformations, as it would prevent the commingling of old offenders with younger delinquents. It is because of the waste of effort in these three institutions that I recommend the abandonment of one and it conversion into a hospital for the insane. Aside from the use to which it could be put for that purpose, it would effect a saving of many thousands of dollars without detriment and without in any way interfering with the results which we all hope may come from the administration of such a department.

The Elmira Reformatory is overcrowded, and perhaps some measure should be taken to enlarge its capacity. The first change, however, which should be made should be to prohibit its use by the United States government, thus relieving the prison to a certain extent from overcrowding.[7]

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[7] Chapter 138, passed April 6, amending the Elmira Reformatory act of 1900, chapter 378, provided for a transfer of inmates of that institution to the Eastern New York Reformatory at Napanoch, or to a State prison whenever the Elmira Reformatory became overcrowded or for other reasons specified in the new act. The provision authorizing the transfer in case the reformatory became overcrowded was new, and also a provision authorizing the transfer to the Eastern New York Reformatory.

At the last session of the Legislature a commission was authorized and empowered to select a new site for the State Industrial School at Rochester, where farming could be engaged in and the inmates given a more wholesome life than is possible under the present arrangement. This commission will shortly submit its report to the Legislature.[8] While at first opposed to the plan, because at the time it was proposed I understood it to be simply a transfer from one section to another without corresponding benefit, I cannot now but urge upon you the necessity for making this improvement along the lines which will be suggested in the report to which I have referred. In all of the State's work there is nothing more desirable than the reformation of those who perhaps have been deprived of proper home influences and of the examples of good citizenship. No branches of the State's charitable work should appeal to us so strongly as its institutions for the insane and its reformatories, because there is something in this work that has a reward at the end, which is not possible with the unteachable and chronic in other institutions. False economy should not dictate our action in this direction, but there should be a ready response to every legitimate demand that may be made for the advancement of this work.

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[8] The report of the commission on the change of site of the State Industrial School at Rochester was submitted to the Legislature on the 3d of March. See Assembly Document No. 57.

The commission reported that it had selected a site known as the "Clapp farm tract" in the northwest corner of the town of Rush in Monroe county. The site was composed of several parcels, included 1,396½ acres, and the aggregate purchase price was $105,660. The total expense of establishing the new site, including land, buildings and other improvements, was estimated at $675,660, and the commission expressed the opinion that the existing site of the school in Rochester could be sold for $200,000.

The supply bill, chapter 599, appropriated $125,000 for the purchase of the land and for other purposes.

An act passed in 1904, chapter 631, appropriated $183,000 for buildings, roads and other improvements.

The act of 1902, chapter 527, which created the commission, provided that the land acquired for a new site should be known as the State Agricultural and Industrial School.

While this department has been in operation only since June 1st, the Supervisor has established a system of purchasing under joint contract similar to that adopted by the Commission in Lunacy, which has already resulted in a material decrease in the cost of supplies for these institutions.

In the matter of expense for construction of buildings for this department, there has been a marked decrease. For instance, the new board created under the charities act to pass upon plans for betterments and improvements, adopted plans for buildings at Sonyea, at the Thomas Asylum, at Oxford and at Newark, where a better class of buildings have been provided, furnishing the same accommodations at a great saving over the cost of similar buildings that were erected during previous years. The food supply has been improved. Impure goods have been thrown out and everything that could be accomplished in giving a better and more wholesome dietary has been done. The same careful supervision by the State Board of Charities is still maintained, and the correction of abuses for which they are constitutionally charged secured, only those powers being taken away from them which it was never intended under the Constitution to confer. With this summing up of the situation I am confident that the people will be satisfied, and that the results, so far as efficiency and economy are concerned, will commend themselves to the taxpayers of the commonwealth.

The increase in the statutory laws of the State, through what are known as special acts, not only consume the time of the Legislature, but render it more difficult for the legal profession to keep in touch with the changes that are constantly being made in our laws. General laws should govern so far as possible. Amendments to the game laws, special amendments to the charters of villages and cities should be discouraged, and relief afforded through general enactments whenever and wherever practicable. The Leg-

islature could well afford under the direction of the Forest, Fish and Game Commission to accord to the boards of supervisors the right to regulate, under a general statute, the game laws for their own particular localities. The veto power which was accorded to the mayors of cities of the State had for its object not only the prevention of undesirable legislation, but also a reduction of the number of amendments to city charters. One of the sources of these legislative ills are measures which seek to restore, to repay or reimburse persons through some failure of power which should be lodged in municipal or State authorities. The time of the Legislature is not only consumed but they sometimes act without a proper knowledge of the merit or demerit of the case and often thus lay the foundation for the establishment of illegal claims. Repairs upon roads, the erection of bridges over the canals and other expenditures to be made by the State should be included in the annual appropriation bill upon the recommendation of the heads of the departments affected. By so doing unnecessary improvements would be avoided and money saved to the State.

The average number of bills passed since 1894, as shown in Assembly Document No. 50, to the year 1900, inclusive, was 243 general bills and 589 special bills. Almost all of this legislation, judging from the experience of New Jersey, which has adopted a provision such as I have suggested, could have been avoided. Taking periods of three years before and after the adoption of this policy in New Jersey, the first period shows the average number of bills to have been 624, 111 of which were classified as general and 513 as special. For the second period the average number of acts proposed was 219, of which 188 were classified as general and 31 special. If the volume of legislation in this State could be reduced in the same proportion through the enactment of general laws it would be found to be of great advantage.

In addition to this there should be some competent authority to pass upon legislative bills before their introduction, or at the time of introduction, subjecting them to a scrutiny which will determine their constitutionality, or whether they conflict with or duplicate existing laws. This would not only secure statutes which would stand the test of the courts, but would avoid much unnecessary delay and reprinting of documents. This subject should receive your thoughtful consideration.

The charter of the city of New York presents many anomalies and renders difficult the fixing of responsibility where it properly belongs. The additional powers which have been given to the Borough Presidents and the Board of Aldermen deprive the Mayor of authority which he should possess and renders it impossible for him to accomplish reforms when these offices are filled by those not in harmony with his administration. Additional power should be conferred upon the Mayor so that he shall be charged with full responsibility as is the case in every other municipality within the State.

The conditions in the city of New York relating to the police force, the fire department and other branches of the city government, are of such a character that amendments should be made to the city's charter to correct the evils which exist. The police department, subject as it is to constant changes in the administration of the city, is in a most deplorable state, and the most drastic legislation would be excusable under the circumstances. 'A system which has permitted and which does permit blackmail and the use of the police department for political purposes, is one that should be condemned by every fair minded citizen. The functions of the police are to protect life and property and to enforce the law, and not to become active partisans in politics. While I am in thorough accord with the principle of home rule, and believe that every municipality should be left to govern its own affairs, yet I also believe that the

charter rights which come from the State should be so framed that the abuses which I have mentioned can be prevented and made impossible. A force which has grown up year after year under the direction of men who have used their offices to enforce payment for neglect of duty should be so reorganized that those whose influence is detrimental to its best interests can be removed and their places promptly filled by those who are more competent and more faithful to their oaths.

In the second class cities of the State there is no power of review by the courts. We may liken the great army of police of the city of New York to the military service, and we know that it is because there is no power, except in the army itself, to punish offenders and reward merit that makes it efficient, so there should be none except in the police force itself to enforce discipline. Mere technicalities or legal quibbles should not be permitted to prevent punishment for failure to perform duty, as is too often the case now with reference to decisions of the Police Commissioner of the city of New York, who is hampered with too strict legal requirements for the conduct of trials of delinquent officers. When he has decided that a man is utterly incompetent, his decision should not be overturned by the courts, who view his conduct of the trial from a legal standpoint only. Such dual authority is sure to lead to an undisciplined force, and the knowledge that through a court decision or by political favor, he may be permitted to avoid such punishment as should be administered, leads the officer to look with contempt upon the man whose tenure of office is at best for a short period. Additional power should be given the Police Commissioner to enable him under proper Civil Service regulations to dismiss incompetent officers, unhampered by the restrictions which are in effect to-day. The criticisms that I have made upon the police department lie with equal force and effect against the fire department,

and the same legislation for the fire department should follow that which I have recommended for the police department.

Both the primary and election laws are constantly violated in the city of New York. Acting under advice, which at that time seemed to me to be such as to merit confidence, I vetoed a measure passed by the last Legislature which prohibited the transferring of voters from one locality to another by certificates prior to primaries.* I am now convinced that this power is a dangerous one and that the law should be so amended that those who register their party affiliations on the days of registry during the fall should alone be permitted to express their preferences at primaries. While the objection may be raised that this would deprive a number of people of a voice in the selection of party candidates, yet this objection does effect equally those who remove from one election district to another prior to election. This power of transfer has been abused in the city of New York by alliances entered into by district leaders of opposite political faith by having a sufficient number of their followers register themselves as being affiliated with the opposite political party for the purpose of influencing contests for party control or for the nomination of candidates at primaries. Of course this is only done when the leader who desires to aid one of opposite political faith knows that he will have no contest for control in his own district. If the period between the date of registering party affiliation were six or eight months prior to the primaries, it would be a preventive in part against the misuse of such powers which can only be used with impunity by a district leader when he is certain that there is to be no contest within his own political party.

I, therefore, recommend an amendment to the existing law which will take away the right of transfer and which

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* *Ante*, p. 420.

will permit those only who are registered on the regular days of registration to participate in party primaries.[9]

The influx of voters into cities and the well-known plans of fraud by which one registers and another votes on the same name should also receive attention at the hands of the Legislature. In the larger cities of some of the States it is required that each registered voter shall sign his name on the day of registration as a means of identification on the day of election, and in case of his inability to write, that his identity shall be vouched for in a manner satisfactory to the full board of registry and election inspectors. I recommend amendments to the election laws as will produce such results in all the larger cities.

The constantly increasing tendency to defective ballots in our State and municipal elections presents some phases which should direct your attention to a more perfect ballot system than exists under the present law. Partisan action too often cause the rejection of ballots. The number of defective ballots cast at the last election was almost as great as the plurality received by the successful candidate for Governor. While it may be true that these ballots are divided evenly between the parties, yet the right of every citizen to express his choice of candidates and have his ballot counted should not be denied because through inadvertence or ignorance of the law it has not been marked in such a way as to satisfy the critical examination of partisan judges. I am of the opinion, therefore, that you

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[9] Chapter 111, passed March 31, amended in several particulars the Primary Election Law of 1898, chapter 179. The right to vote at a primary election outside of cities containing 1,000,000 inhabitants was limited to persons whose names are on the duplicate enrollment book for the district in which they reside, showing that they are enrolled with the party in whose primary election they seek to participate. The statute allowed transfers in case of a change of residence from one district to another, except in cities containing a population of 1,000,000 or over, and in such cities no elector could take part in any primary election of any party other than the party with which and in the election district in which he enrolled at one of the four regular meetings for registration.

should give this subject your careful and earnest consideration, and that legislation should be enacted that will in part at least prevent this growing evil in our ballot system.

The relations between capital and labor should always be harmonious. Each is dependent upon the other and without a due regard for the rights of both there is a certainty of friction, which leads to misunderstandings and to demands which are not justified. It has been the aim of the State through legislation to extend privileges to both capital and labor, to encourage manufacturing industries and to offer inducements for their location within the commonwealth, thus affording certainty of employment for those who labor. Competition has made necessary the grouping together of industries, and the progress of our country and the increase in our prosperity have been natural sequences of this condition. Labor has met this by combinations or unions, so that we have not only combinations of capital but combinations of labor to deal with as well. Under our system of government both are entitled to equal protection, and from both should be exacted the same respect for law and authority. Arbitration between conflicting interests has been resorted to whenever possible by the labor department of our State, and so successful have been these efforts that we have had but little disturbance during the past year between these great interests. I believe that wherever the necessaries of life are involved in dispute between employer and employee, that power should be conferred upon those affected to apply to the courts for relief, and that no power should be possessed by either capital or labor to deprive the people of that which is necessary for their welfare, but that ample authority should be lodged in the judiciary to properly enforce its mandates and that such disputes whenever they arise should not be permitted to interfere with those rights which are paramount and necessary for the well being of the people. Proper legislation, therefore, should be accorded for this arbitration

either by amendment or by the enactment of new legislation. The strike upon the Hudson Valley electric railroad, necessitating the ordering into service of the National Guard, developed a condition, through the expulsion of a member of the Guard from a labor union, which is prejudicial to the best interests of the State. Under the Constitution every citizen is liable to military duty.[b] Under our law we have provided for voluntary enlistment in the National Guard, giving in return certain rights and privileges for the service thus rendered. The stability of our government depends upon prompt obedience to and the proper enforcement of our laws, and whatever tends to break down the safeguard of the judiciary and make inoperative the orders of the court is detrimental to public policy and is a clear defiance of law and authority. There have been instances in the State where employers have discharged employees because of their connection with the National Guard, notably in the case resulting from the Brooklyn railroad strike. Certain labor unions now deny their privileges because of membership in the National Guard. This is a blow at constitutional government. The law at present is inadequate to meet this condition and it should be your duty to correct it by amendment. I believe whatever tends to lessen the patriotism of our people is out of harmony with republican government, and I commend this subject to your consideration with the recommendation that such offenses be made misdemeanors and that adequate punishment be provided therefor.[10]

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[b] Const. 1894, art. 11, § 1.

[10] Chapter 349, passed May 6, amended the Penal Code by adding the following sections:

Sec. 171b. A person who, either by himself or with another, wilfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said national guard, or his employer, in respect of his trade, business, or employment, because said member of said national guard is such member, or

The Tenement House Law, which was enacted in 1901 and amended at the session of 1902, I am satisfied should be further amended. It is claimed that conditions which are applicable to New York city should not apply to the borough of Brooklyn or to the city of Buffalo. I recommend this subject to your consideration for such action by you as will cure such defects in the existing law, which have been made manifest under its operation during the past two years.[11]

The purchase of land in the Adirondacks for the preservation of our water supply has not been continued during the past two years. I have been of the opinion that some definite plan should be adopted so that the State, if it desires to take all of the land or such portion as may be determined upon, within the limits of the proposed park, should pursue the work along lines that are designed to fully protect and guard the State's interests. In my last message I recommended that in return for privileges which would permit scientific forestry upon private lands, that the State should assume all taxes within the park. There were

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dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a misdemeanor.

Sec. 171c. No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the national guard of the state of New York, because of such membership in respect of the eligibility of such member of the said national guard to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said national guard. A person who aids in enforcing any such provisions against a member of the said national guard with the intent to discriminate against him because of such membership, is guilty of a misdemeanor.

11 Chapter 179, passed April 14, amended in numerous particulars the tenement-house act of 1901, chapter 334.

many favorable responses to this proposition from large owners of real estate in the Adirondacks. So long as forestry and lumbering are pursued upon scientific lines, enough land is now owned by the State to protect the water supply, but the danger arises from changes of ownership by those who are now making their summer homes within the park limits. The question is a very important one. It will require several millions of dollars to secure land that as yet is not owned by the State. Whether this is to be done by small annual appropriations with constantly increasing prices, or whether the subject is one that calls for liberal appropriations, which are only possible through bond issues, is worthy of your consideration, and I recommend that the subject be referred to a commission to inquire into and ascertain the ultimate cost and the benefits to be derived by the State.[12]

The building of good roads has continued during the past year with gratifying results. So great is the demand for

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12 A resolution was adopted by the Assembly on the 23d of April providing for the appointment of a committee of seven members of that body to investigate several matters relating to forests, the forest preserve, the pollution of streams, the destruction of trees caused by dams, taxation of forest preserve lands, and particularly as to the propriety of a constitutional amendment authorizing the cutting of timber on forest preserve lands. The committee was required to report at the next session of the Legislature.

The report of this committee was submitted to the Assembly on the 13th of April, 1904. See Assembly Document No. 60. The report contains an account of the travels of the committee through the Adirondack region, and of the condition of the forests and forest lands. The committee recommended a constitutional amendment authorizing the lease of camp sites, especially on Raquette and Saranac lakes and Lake George. The committee also recommended ample appropriations "for the further acquisition of lands in the Adirondack park, for the prevention of forest fires, for the establishment of forest nurseries, and for the reforesting of the denuded lands in the forest preserve."

No constitutional amendment was introduced embodying the policy of leasing camp sites, but an amendment was introduced in each House modifying the forest preserve provisions of the Constitution by authorizing the removal of dead timber from burned areas, and the sale of forest lands outside the Adirondack and Catskill parks.

State aid that it will soon become necessary to have recourse to bond issues to meet these increasing obligations. If, therefore, any extension of time for the payment of bonds is authorized for canal improvement it should be made applicable for this purpose also.[13]

In some of the States it has been thought wise to have one of the departments bring to the attention of the public the attractions within the State and to give information concerning them. This has been notably true of New Hampshire, which has placed the management of this work under the control of the Bureau of Labor. The interesting statement is made that more than five millions of dollars were spent in the State of New Hampshire during the past year by nonresidents, such as summer boarders and tourists. Whatever may tend to increase the wealth of the State and make it more attractive is important, and I would suggest that it might be well to empower the Forestry Commission to work along similar lines and to issue such publications as are necessary to properly and adequately perform this work.

In the administration of the Excise Department it has been the custom to depend more upon civil actions than upon criminal prosecutions for the proper enforcement of the law and for the punishment of violations. It often occurs that prosecutions are begun long after the violation has taken place, and this is perhaps caused by the lack of facilities afforded by the courts. It seems to me that inasmuch as the State is the licensing power, both the civil and criminal prosecutors should be absolutely within the control of the department, thus effecting a more speedy settlement of all excise cases. The law should be so amended

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[13] A constitutional amendment was adopted by the Legislature at this session, adding to article 7 a new section, 12, authorizing the creation of a State debt of $50,000,000 for the improvement of highways. The amendment was again adopted by the Legislature of 1905 and approved by the people at the general election in that year.

as to make it obligatory for immediate notice of every violation to be given the bondsmen and also that it is the intention to immediately begin suit. Police authority should be accorded to inspectors, thus enabling them to arrest at once violators of the law. This would be following the practice of the Federal government in the enforcement of the internal revenue laws, and I am convinced that better results would be produced than have been shown during the past few years. It may necessitate an increase in the number of inspectors, but if it brings about a better observance of the law, the expense will be justified. I recommend such legislation.

The State's prisons and reformatories are designed, not only for the punishment of crime, but have also as their object the winning back as far as possible to good citizenship those who have taken their first downward step. The Parole Law had this for its object. Results have followed which in the main are satisfactory. A betterment of the prisons has been going on under the wise administration of the Prison Commission and the Superintendent. The health of the inmates shows that from a physical standpoint everything that is desirable has been furnished, and the inducements held out under the Parole Law have had the effect of bringing about more reformations.

The additional amount provided by the Legislature for primary and secondary education has produced such results as to lead to still further recommendations for a more liberal treatment of those desiring the advantages of higher education, and your attention is directed to reports of the Educational and Regents Departments for information upon these important subjects. It should be provided by legislation that high school education shall be accorded to all pupils residing in districts without these advantages, at a per capita rate to be paid for by the State, and thus relieve the parents of the expense of tuition incident to the full enjoyment of these privileges. In the consideration of

this subject there should be no antagonism which will produce friction between the departments affected, and only such consideration should be given as will produce the best results.[14]

The laws relative to the employment of children are in such an unsatisfactory condition that their enforcement is almost impossible. It is the duty of the State to guard against illiteracy, and the Truant Law, which had this for its object, is made practically inoperative by failure to fully prevent child labor by existing statutes. The law which prohibits the employment of children in factories does not prohibit their employment by such corporations as telegraph and other companies, and the result has been that New York State shows an increase over the last census in the percentage of those who cannot read and write. Aside from a desire to guard against physical and mental degeneracy and to prevent other abuses, this one fact of itself is of sufficient importance to demand attention, and I recommend that the present law be so amended as to make effective the statutes regarding the employment of children.[15]

The Commission which was appointed to inquire into the law's delay in the First and Second Judicial Departments has in part performed its work, but owing to the lateness of its appointment it is not possible for it to present a report at this time which would be of value in the formulation of amendments to existing law. The Commission should be authorized to continue its work during the present ses-

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[14] Chapter 542, passed May 11, appropriated $100,000 for the payment of the tuition of nonresident pupils from schools not maintaining an academic department who shall be admitted to schools maintaining an academic department, without other expense for tuition than that provided in this act. Payments were to be made on the joint certificate of the State superintendent of public instruction and the chancellor, according to joint regulations prescribed by them.

[15] Chapters 151, 184, 255, and 561 contained regulations respecting child labor.

sion, and even for a longer period, because there is nothing of greater importance to the people of New York city than, if possible, the correction of conditions which have made it almost impossible to secure speedy adjudication of cases in these departments.[16]

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[16] The commission on the law's delay in the first and second judicial districts was appointed by L. 1902, chap. 485. By L. 1903, chap. 634, passed May 15, the commission was given until January 15, 1904, to present its final report.

The report of the commission was transmitted by the Governor to the Legislature January 25, 1904. See Senate Document No. 21.

The commission recommended constitutional amendments authorizing the Legislature to increase the number of justices of the supreme court according to a prescribed ratio of population, and to enlarge the court of appeals to a membership not exceeding eleven judges, also an amendment authorizing an appeal directly to the court of appeals from a final judgment in an action or final order in a special proceeding in the supreme court at a trial or special term when such appeal involves only a question of law.

The recommendations also included the appointment of supreme court commissioners in counties containing a population exceeding 500,000; such commissioners to act as referees, and as commissioners in condemnation proceedings, and also to try causes in the supreme court on a reference to them by consent of parties. Such commissioners were to be appointed by the appellate division, must have had ten years experience at the bar, might receive an annual compensation of $10,000 a year, and were prohibited from practising law. Such appointments were to be subject to the approval of the chief judge of the court of appeals, and the Governor was also given a limited power of veto over the appointments.

Another recommendation included a plan by which a preliminary hearing was had immediately after the issue of the summons for the purpose of determining the issues in an action. Also a plan for accelerating the progress of an action by means of a special calendar in certain cases. Also a classification of causes on the trial calendar by creating a tort list, a contract list and a commercial list. Also an amendment to the Code of Civil Procedure intended to secure a diversion of business from the supreme court to the New York city court, by enlarging the amount of the recovery to entitle a party to full costs. Also a plan of judicial statistics based on an English model.

The commission also recommended the prohibition of campaign contributions by candidates for judicial offices. This recommendation was substantially included in the corrupt practice act of 1906, chapter 502. The commission's recommendation as to the increase of justices of the supreme court, which was already embodied in a pending amendment, was incorporated in the Constitution in 1905, by an amendment to article 6, section 1.

See 1904, May 11, *post* p. 662, for a veto of a bill providing for supreme court commissioners.

The Civil Service of the State, through the enactment of the so-called White Civil Service Law, has brought upon the administration of that department new duties, and its findings and decisions have been subjected to review by the courts more frequently than those of any preceding boards. As is well known, the consent of the Governor is necessary before any change can be made in the classification of employees of the State and counties, while in the cities the approval of the action of the local Civil Service Boards depends upon the State Civil Service Commission. It has become the custom, however, to practically nullify this law through actions in the courts, by directing through mandamus and otherwise the payment of salaries where the approval of the Civil Service Board to the payment of such salaries has been withheld. This entails considerable expense upon the State and some amendment should be made to the existing law to remedy this condition. I recommend, therefore, that where changes have not been sanctioned by the State Civil Service Board or the Governor, that no salaries shall be paid by the local authorities or the State Treasury, and that the power to enforce such payment in the courts shall be denied. Flagrant violations of this law have frequently occurred through these court orders, and employees in the competitive class have been able to secure that through the court which has been and should be denied them under the statutes which exist for governing the Civil Service of the State.

I trust that the results of your deliberations and of your action may be such as to merit continued approbation of the citizens of the State. I can but pledge you my cordial co-operation in carrying out and in still further advancing the standard of our State in the administration of its affairs.

B. B. ODELL, JR.

SPECIAL MESSAGES.

February 17. To the Legislature: Notifying the Legislature of a vacancy in the office of Regent of the University, caused by the resignation of St. Clair McKelway.[17]

February 20. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 19, 1903.

"In approving Senate bill No. 8, introduced by Mr. Armstrong, entitled 'An act to legalize, ratify and confirm a special election of the village of Brockport, held on the twenty-first day of May, nineteen hundred and two, and all the proceedings, contracts and other acts of the trustees of the said village, in relation to the establishment, construction and maintenance of a system of sewers and sewage disposal works in and for said village, and to legalize, ratify and confirm the bonds of said village issued in pursuance of said special election for the purpose of constructing said sewers and disposal works; and to provide for the sale and payment of the principal and interest of said bonds, and to acquire lands necessary therefor,' I desire to call the attention of the Legislature to the numerous bills which through failure to observe some feature of the statute governing the issuance of bonds are brought before the Legislature each year. While there should be no reason, and perhaps there is no intent, to act in any other manner than as laid down in our statutes, yet the insistence of purchasers of bonds for their validation under the slightest pretext will in the near future make it necessary for every bond to be legalized by special act of the Legislature.

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[17] Mr. McKelway withdrew his resignation, and continued to act as a regent during the existence of the Board of Regents as then constituted, and on the reorganization of the Board under the Consolidation Act of 1904, chapter 40, he was chosen by the Legislature as a Regent for two years, and in 1906 was re-elected for the full term of eleven years.

In view of this, and also of the fact that bills introduced for this purpose but seldom set forth the defect which it is desired to remedy, it seems to me that some local body should be vested with power to pass upon the legality of such bonds and to correct such defects without burdening the Legislature with their consideration.

If a general law were enacted authorizing the boards of supervisors of the various counties to pass upon these questions, it would be a greater safeguard to the interests of the taxpayers than the present system, and would render action by the Legislature of the State unnecessary.

I recommend, therefore, the enactment of a general law by which the Legislature shall confer upon boards of supervisors power to cure defects in proceedings and validate bonds authorized at a taxpayer's election.

B. B. ODELL, JR."

The foregoing Brockport bill became chapter 5.

February 25. To the Senate:

Veto of a bill entitled "An act to amend chapter ninety-four of the laws of eighteen hundred and seventy-seven, entitled 'An act to authorize the appointment of a librarian of the law library in the fifth judicial district, located at Utica,' as amended by chapter fourteen of the laws of eighteen hundred and eighty-seven."

"This act seeks to increase the compensation of the librarian in charge of the library in the fifth judicial district, in the city of Utica, from $600 to $1,000 a year. There are thirteen judicial district libraries, established by statute, and the uniform rate of compensation fixed for each librarian has heretofore been $600 per annum. Should the increase sought by this bill be granted, it would undoubtedly be followed in due course by further legislation for the pur-

pose of raising the salaries of the other twelve librarians to the same amount. This would necessitate a total increased annual appropriation of $5,200.

I am not convinced that the duties of this position are of such a character, or so burdensome, as to justify the larger amount named in the bill. For this reason Executive approval is withheld."

The bill was not passed over the veto.

February 25. To the Assembly:

Veto of a bill entitled "An act to amend the civil service law relating to the qualifications of applicants for civil service examinations."

"The civil service law at the present time declares, among other things, that any one 'who has been guilty of a crime or of infamous or notoriously disgraceful conduct' may be refused examination or certification for positions. Should this act become a law it would exempt from this provision persons under the age of sixteen years, and render them eligible to such examination and certification, although previous to that age they had been convicted of a felony, in whatever degree and of whatever character. While there may be justification for excepting those under the age of sixteen who have been convicted of a simple misdemeanor, the proposed change is entirely too sweeping in its character. It might relieve those who at the age of fourteen or fifteen had been guilty of acts of a most reprehensible and criminal character.

Believing that the amendment is much more comprehensive than any necessity requires, I have returned the bill without Executive approval."

The bill was not passed over the veto.

March 11. To the Senate:

Veto of a bill entitled "An act to amend section fourteen of the general corporation law, relative to the acquisition of property without the state.[18]

"This bill authorizes any domestic corporation establishing or maintaining a charitable, philanthropic or educational institution within this State, to carry on its work and establish and maintain one or more branches of such institution, or an additional institution or additional institutions, in any other State, the District of Columbia or any of the Territories or dependencies of the United States of America, or in any foreign country, and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey, or otherwise dispose of such real and personal property without the State, as may be requisite therefor.

This is an exceedingly broad provision and one which should not be granted unless the strongest reasons can be given for its enactment. It practically allows an institution established under the laws of this State and under its supervision to go anywhere in the world and to do the same as it is authorized to do here, and, for any of the purposes for which it is established, to take and to hold an unlimited amount of real or personal property which, under the provisions of our State law, is exempt from taxation. This extension of the power to take and hold property free of taxation is one which is opposed by the Comptroller's office representing the fiscal interests of the State. For these reasons the bill should not receive Executive approval."

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[18] This bill was not passed over the veto, but another bill, amending section 14 of the general corporation law, was passed and became chapter 178 on the 14th of April. The new bill obviated the Governor's objections in relation to exemption from taxation, and provided that "nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws."

March 11. To the Senate:

Veto of a bill entitled "An act to amend chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, entitled 'An act to provide for the improvement of the public highways.'"

"The bill amends section one of chapter fifteen of the laws of eighteen hundred and ninety-eight, commonly known as the 'good roads' law, by allowing highways within the city of Rome to be improved under that law. The good roads law, section one, provides that no roads or highways located within the bounds of an incorporated city or village shall be improved under its authority. This bill is in effect special legislation for the city of Rome, applying a different rule to the highways of the city of Rome from that which prevails in the other cities and villages of the State. If there is to be a change in the policy of the Legislature in regard to the improvement of highways within villages and cities, it should be made general and not so as to affect a single city of the State.

For these reasons the bill has not received Executive approval."

The bill was not passed over the veto.

March 11. To the Senate:

Veto of a bill entitled "An act to amend chapter four hundred and sixteen of the laws of eighteen hundred and ninety-three, entitled 'An act in relation to the city court of Yonkers.'"

"The certificates attached to this act are defective, but there are other reasons why it should not become a law. The city court of Yonkers is a court of limited jurisdiction and practically takes the place of the justices' courts in the towns and smaller cities of the State. The provisions of this bill seek to broaden its power by providing that on return of an execution against property unsatisfied in

whole or in part 'by any constable of the city of Yonkers' proceedings supplementary to execution may be had before the city judge to the same effect as if returned by the sheriff. The power to take proceedings supplementary to execution is one that should be carefully guarded and only conferred where it can be properly used for the purpose of enforcing the judgment of the court, and not for the purpose of harassing and annoying persons on minor claims or for the purpose of making costs thereon.

For the reason that I do not believe there is any necessity for this extension of power, the bill has not received Executive approval."

The bill was not passed over the veto.

March 12. To the Assembly: Transmitting a copy of a communication received from the State Commissioner of Health, relative to the possible pollution of the waters of New York bay. The legislative records do not contain this communication.

March 19. To the Assembly:

Veto of a bill entitled "An act to amend the village law, in relation to diminishing the boundaries of villages." [19]

"This bill amends the village law by adding thereto a new section, number 326-a, which provides a scheme for diminishing the boundaries of a village. By the bill under consideration it would be possible to exclude territory from an incorporated village for the purpose of obtaining the

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[19] This bill was not passed over the veto, but it was amended, again passed, and became chapter 606 on the 15th of May. The amended bill obviated the Governor's objection by adding a provision that the section "shall not apply to any county in the State which has adopted, or may hereafter adopt, the system of highway improvement under chapter 115 of the laws of 1898, or the acts amendatory thereof."

See the special message of March 11, for a veto on the same ground of a bill amending the good roads law, by making it applicable to the city of Rome.

benefits as to improvement of roads in such excluded territory. Under the provisions of chapter 115 of the laws of 1898, commonly known as the 'good roads law,' it is now provided that no highway within the boundaries of any city or incorporated village shall be improved under its provisions.

In recent years several attempts have been made to secure for cities and villages the benefits of the good roads act by evading this provision of the law under a scheme for diminishing or changing the boundaries of the city or village desired to be affected. Whatever may be thought as to the propriety of the present provision, so long as it remains in the law, it should apply equally to all the villages and cities in the State. If at any time the Legislature should deem it wise to change its policy in this respect, it should be done by amending the good roads law and not by providing means to escape its prohibitions in regard to the improvement of highways and streets of certain villages and cities.

The bill therefore fails of Executive approval."

March 25. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill entitled "An Act to amend the liquor tax law in relation to excise taxation." The bill was passed and became Chap. 115 on the 2d of April.

April 6. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 6, 1903.

"The necessity for a more equitable system of taxing mortgages, or for their total exemption from taxation, is perhaps more apparent to-day than ever before in the history of the State. The discussion which has followed the introduction of the measure which proposes to lay a tribute of four mills per annum upon all mortgages, while

it may not produce the results desired, should at least lead the Legislature prior to its adjournment to formulate a statute which will correct existing inequalities and give the color of law and authority of the Legislature to such exemptions as are now only secured through open evasion of the law or failure of the assessors to perform the duties for which they were chosen.

Whether mortgages should be taxed or not is an open question, considered either from the point of view of those who borrow or of those who lend. That they are now unjustly taxed in some localities and permitted to escape entirely in others, is a conclusion beyond the peradventure of a doubt. Either all mortgages should be taxed, or none. Mortgages are the representatives of tangible property, and if tangible property were assessed at its full valuation, there could be no question that to a certain extent their taxation would be double taxation. Whatever the percentage of valuation the real estate is or may be in a given locality, such additional value beyond the valuation of like unencumbered property is to that extent double valuation, and an inequitable system which must necessarily become a burden upon the borrower. The converse however of this proposition, is equally true, that if the total assessed valuation in a given locality should be increased by including mortgages subject to taxation, he who does not borrow would receive a corresponding benefit as well as the borrower himself, through a lower tax rate.

A study of this situation led me in my first annual message, under date of January 1, 1901, to suggest the exemption of all mortgages from taxation.* The discussion which followed in the Legislature led however to the uncovering of facts which made the enactment of that recommendation into law a matter of extreme doubt, because in certain localities the burden upon both encumbered and

* *Ante*, p. 197.

unencumbered real estate would have been increased. In my second annual message, recognizing the force of this objection, and with the same desire to relieve those who were thus unjustly taxed, I suggested a recording tax, applying only to future mortgages, and in return for this recording tax, an exemption from all other forms of taxation.* This was opposed by those who not only saw that it would lead to a lessening of the assessment rolls, but also an additional burden upon building operations in the greater cities. These objections were not overcome by a suggestion to turn over to the localities the full amount of the tax, as it was alleged that in a certain few of the counties of the State even that revenue would not be equal to that which they would forego under the present system which levies from two and a half to three per cent upon mortgages which are assessed as personal property. Still, with a desire to at least reduce the rate of taxation upon mortgages if they could not be entirely exempted, I suggested in my annual message of the current year a tax of four mills, exempting from the tax only those mortgages held by savings banks, insurance companies, building and loan associations, and religious, benevolent and charitable associations.†

This recommendation when presented to the majority of the Legislature in caucus was adopted, and although to my mind the worst of the three propositions which had been presented in the three years, yet with a desire to relieve mortgages from the oppressive tax which is now levied against them, I was led to acquiesce in the suggestion of the majority of the Legislature, even going so far as to waive the exemptions which were suggested in my message. From the recent action of the majority in the Assembly, it would seem now that this proposed legislation was again to be abandoned, and that the same unfair,

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* *Ante*, p. 347.

† *Ante*, p. 489.

inequitable and unjust discrimination was to be continued during the next year. The gravity of the situation leads me to again urge upon the Legislature the propriety and the justice of the demands of those who ask that their property shall be treated fairly and that if the present average rate of two and a half per cent is to be imposed, it shall be imposed upon all interests alike, and thus bring about not only a reduction of the tax upon real estate but the correction to a certain extent of the greatest and gravest error and defect in our tax laws.

The pending measure should not be called a measure to tax mortgages, because this is contrary to the truth. It is a measure to reduce the rate of taxation upon mortgages; and while it proposes to add those mortgages held by the various institutions and associations for which I urged exemption, we could well afford by subsequent supplemental legislation to still continue a paternal oversight of these institutions and societies by repealing certain existing tax laws affecting them and thus perhaps place eventually no greater burden upon them than that which they are now called upon to bear. A mortgage may be likened to a stock certificate. It represents the value of certain property. It is in effect a note, for the payment of which the property is held liable instead of an individual indorser. A stock certificate represents the value of property to be divided up among individuals, and it has been the policy of the State to exempt the stock certificates of domestic corporations in the hands of private interests from personal taxation, because an additional tax to that now levied upon the corporation itself would be manifestly double taxation. But the extent to which we have gone in the assessment and collection of taxes against the corporations of the State finds no parallel in the taxes of private individuals and private ownership. It may be of interest to state that while the steam railroads of our commonwealth paid in dividends in the year ending June 30, 1902,

$18,975,339.50, the same corporations paid for taxes, $11,665,124.99; while the street surface railroads paid in dividends, $3,939,343.73, and in taxes, $2,456,881.82. In other words, the steam railroads, which practically own all the property upon which they operate, paid in taxes more than 60 per cent of the amount which they paid in dividends; while the surface railroads paid in taxes about 64 per cent of the amount paid in dividends. This latter percentage would be increased materially if the franchise tax suits now before the Court of Appeals should be decided in favor of the State. It is well known that the average rate of assessment in the State is not beyond 60 per cent. While the recent raising of the assessment to a full valuation in the city of New York, may make some slight difference in the average, it cannot affect it materially. If property is assessed therefore at 60 per cent and if its income for rental value is 6 per cent upon the investment, it would pay but 25 per cent of the income for taxation purposes. That is, that a $1,000 house assessed at $600, upon a 6 per cent rental valuation, would produce $60, of which $15 would go for taxation. So if we are to regard a mortgage tax in the same light as a stock certificate and exempt it from taxation, either the real estate which it represents should pay a greater portion, or the mortgage of itself should bear a proportionate share of the taxation. The bill now before the Legislature adopts the latter method and proposes exemption from all other forms of taxation, taking it entirely outside of the classification of personal property and reducing the burden upon both the property which it covers and that which is unencumbered. So that there would be nothing of personal property to assess except that which is represented by the certificates of stock and bonds and other evidences of debt of foreign corporations, credits and stocks of merchandise and other similar forms of personalty, thus reducing to a minimum the double taxation which is now the bane of our tax system.

But it is claimed that the borrower would pay this tax, and that any resort therefore to this species of taxation would in effect place the burden upon the borrower and render him liable for all taxes which might be imposed. It is a matter of fact however that since the agitation upon this question of a mortgage tax began four years ago, there has been scarcely a mortgage drawn which does not bear as a part of the penalty, in addition to the insurance clause a clause that any taxes levied by the State shall be paid by the borrower. By the State of course is meant all taxes, and this is advanced as a reason why this proposed bill should not become a law. That the borrower is not obliged to-day to pay this tax, which I have stated averages about two and a half per cent, is due to the negligence and, if I may say so, the criminal negligence of the local assessors in not resorting to the means at their command in assessing property liable to taxation which is to be found upon the books of the various county clerks and registers in the State. There is therefore an ever-present fear that instead of the four, five and six per cent interest which the borrower is paying, he may be at any time called upon to assume this additional burden, and that too without any interference or any additional legislation upon the part of the State. If therefore those who have opposed this measure are earnest in their interest in the borrower, they would hail the enactment of this law with delight, because it would relieve the borrower of the fear of the difference between a four mills and a two and a half per cent rate, and would make more certain the influx of money into the State for investment in mortgage securities, while the certainty of a minimum tax would remove from the borrower any obstacle in the way of a lower interest rate, which is not obtainable under our existing system. Interest rates are made up of two parts: First, a fair return for the money invested; and, secondly, that part which represents the fear of the lender that he may be assessed upon the

money which he has loaned. Bonds of the United States bearing as low a rate of interest as two per cent sell readily at par, while municipal and State bonds, free from taxation, sell on a three and a half per cent basis, because the fear of those who buy these bonds that they may be subjected to taxation upon them, has been removed. Railroad bonds bearing interest from three per cent upward, are sold readily because in every bond it is explicitly set forth that taxes upon such bonds shall be paid by the corporation which issues them. Therefore such corporations are gainers not only in reducing the percentage of interest which otherwise they would be called upon to pay were the danger more imminent, but also by escaping from the taxes which are absolutely and lawfully due to the State. There is more reason however that the bonds of corporations, which are now so heavily taxed as I have indicated, should be exempted, because they are paying a larger proportion of the State and local burdens than any other class of property. So too with the savings banks. While they have outgrown their original purpose, possessing as they do now as much money as do all of the banks and trust companies in the State combined, yet they represent the thrift, growth and prosperity of the State, and their protection should have our earnest consideration and support as much to-day as ever before. Insurance companies bear somewhat similar relations to the citizens of the State by offering an avenue for investment and by assuring a competency for one's family, and whatever may tend to lessen the cost and operating expenses of these companies is deserving of the same consideration as that shown to savings banks. So too with building and loan associations which build up the hamlets and cities of the State, and which encourage frugality. Religious, benevolent and charitable associations, because of the work which they are performing, are deserving of encouragement from every progressive citizen. But these companies and associations repre-

sent but a small proportion of the mortgages held in the State. Savings banks have but $460,000,000 invested in mortgages; insurance companies $260,000,000; and religious, benevolent, charitable and building and loan associations probably $50,000,000 at the outside. This is but a small proportion of the $3,500,000,000 of mortgages, including those of corporations, which are in existence in the State to-day. By actual investigation, eighty per cent. of the property assessed as personal property to-day, is represented by the personal assessments of banks, trust companies and other corporations, while the twenty per cent. represents the amount assessed upon other personalty. Assuming therefore that all of the personal property assessed against individuals consists of this twenty per cent., there are but $135,000,000 upon the assessors' books of individual personal assessments.

No party, no man, ever gained either political or personal advancement or favor through the fear to correct a wrong. That an evil exists in the present system of mortgage taxation is manifest, and that it is a burden upon those who cannot escape, upon widows and orphans whose money is tied up in trust estates, should lead the Legislature to take into consideration the necessity for action and attempt in some way to correct this condition. If it be by the total exemption of mortgages from taxation — if that be the conclusion of the Legislature — I am ready to give to it my sanction and approval. If it be by imposing a small yearly tax, either four mills or two mills, I am willing also to go to that extent, because I believe that is so much nearer right than the existing law and that it would meet the approval of the citizens of the State. If it be by imposing a recording tax, affecting only future mortgages, I am willing to lend my approval and assistance in that direction. But I believe that the Legislature of the State of New York would be recreant to the trust that has been reposed in it if an adjournment should occur without a correction of the evils to which I have directed attention.

It may be asked: Where is the money to come from that is necessary to continue the exemption from a direct State tax upon the property of the State for State purposes. Two answers to this question are apparent. First, greater economy upon the part of the Legislature. Secondly, we are perhaps within a million or two millions of dollars of the fulfillment of the promise made by the dominant party in the Legislature to the people of the State in its last party platform. If a recording tax of two mills or two and a half mills were imposed upon future mortgages, it would produce all of the revenue necessary and we could go before the people complying with their reasonable and just demands for improvements without curtailing anything that may be necessary and without indulging in extravagance in government.

I am so impressed with the necessity for some action upon your part that I take this opportunity of calling it to your attention. Sensible of the obligation which confronts those of us who are charged with the administration of the State's affairs, and of the justice, the equity, and the right that a remedy should be found for this crying evil, I feel confident that some solution will be arrived at by those who are in control of the legislative affairs of the State, that will not only perfect the existing law, but which will redound to the credit of those who are instrumental in bringing it about. [See note 1, *ante*, p. 489.]

B. B. ODELL, JR."

April 9. To the Assembly:

Veto of a bill entitled "An act to amend chapter four hundred and forty-one of the laws of eighteen hundred and ninety-nine, entitled 'An act to create a commissioner of jurors in the several counties of this State,' relative to a notice server."

"The principal amendment to the law sought to be accomplished by the bill under consideration is to provide

for the appointment of a notice server, whose compensation shall be fixed by the board appointing the commissioner of jurors.

The duty of summoning jurors to attend court has been exercised by local officers from time immemorial. The commissioners of jurors are not elected or appointed by 'the electors of the respective counties or appointed by the board of supervisors or other county authorities.' They are appointed by justices of the Supreme Court, who are State officers, and the county judge. An act of the Legislature empowering the commissioner to appoint a subordinate who would exercise functions previously and from 1846 exercised by the sheriff would be of doubtful validity.

For this reason the bill has failed to receive Executive approval."

The bill was not passed over the veto.

April 9. To the Assembly:

Veto of a bill entitled "An act to amend the town law in relation to the compensation of town officers." [20]

"Should this bill become a law it would permit the payment to the assessors and commissioners of highways in the towns of the county of Nassau of a salary not to exceed $1,200 per annum each. Where exceptions have heretofore been made to the rate of compensation which is paid generally throughout the State to town officers, it has been because of the extraordinary value of the real estate to be assessed, or because the population of some of the towns had grown so that they had in fact in some counties become as populous as large villages or cities. There is no such

[20] The bill was not passed over the veto, but was amended, passed again, and became a law, chapter 492, on the 9th of May. The provision in the vetoed bill relative to salaries in Nassau county was modified by making it applicable only to towns containing a population of 17,000. The new bill also contained other provisions not included in the vetoed bill.

condition existing throughout the entire county of Nassau as to justify this wholesale increase of the salaries of these officials, nor has there been any such demand from the local authorities as to justify the Legislature in increasing the maximum amount to be paid to such assessors and highway commissioners.

For the reason that the Executive does not believe this very large increase in the salaries of these officials should be permitted unless some special and convincing reason can be shown, which has not been done in this case, the bill has failed to receive Executive approval."

April 10. To the Senate:

Veto of a bill entitled "An act to amend the code of civil procedure, relative to undertakings for the discharge of personal property from attachments."

"By this act it is proposed to amend the code of civil procedure by inserting therein an additional section in reference to the discharge of personal property from attachments. The bill has received careful consideration, but its provisions are not such as commend themselves to the Executive. While sections 657, 658 and 659 of the code are not specifically repealed, yet as the additional section provides for a complete form of procedure it may be contended that it is an exclusive remedy. If it is susceptible to this construction it is probably unconstitutional, as property might be taken without due process of law.[c]

The relief which it seeks to afford is now available by an action for conversion, or an action in replevin also, and for these reasons the bill has failed to receive Executive approval."

The bill was not passed over the veto.

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[c] Const. 1894, art. 1, § 6.

April 13. To the Assembly:

Veto of a bill entitled "An act to amend the town law, relating to the rental of rooms for the use of posts of the Grand Army of the Republic."

"This bill provides that the electors of towns may authorize the leasing of rooms for five years for the holding of meetings of posts of the Grand Army of the Republic, at a sum not exceeding one hundred and fifty dollars per year, and that such rental shall be a town charge, payable in such manner and at such times as are other town charges. Bills allowing application of public money in aid of voluntary associations of a private nature are of more than doubtful validity. The Constitution prescribes, section 10, article 8,

'No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation * * * nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes.'

The Grand Army of the Republic is a private voluntary association, and it can not be claimed that the hiring of rooms for it is a town purpose. Furthermore, so far as can be learned, the official representatives of the Grand Army of the Republic have not sought the enactment of any such statute, and apparently there is no general demand among the members of the Grand Army of the Republic for it.

For these reasons the bill has failed to receive Executive approval."

The bill was not passed over the veto.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of the appropriation act. [See certificate of April 21.]

April 14. To the Legislature: Certifying to the necessity of the immediate passage of "An act to stop spring shooting, and to amend sections twenty, twenty-a and one hundred and three of chapter twenty of the laws of nineteen hundred, entitled 'An act for the protection of the forest, fish and game of the state, constituting chapter thirty-one of the general laws,' in relation to wild fowl," as amended.

The bill was passed and became chap. 256 on the 24th of April.

April 20. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 20, 1903.

The growth of our educational departments and the conflict between the Regents and the Superintendent of Public Instruction, which has engendered so much acrimony during the present session of the Legislature should lead to some action upon your part that may tend to correct and to improve conditions as they exist to-day. This constant friction cannot produce other than serious results, and aside from the additional expenses which are incurred through dual inspection and dual authority, it is bringing the schools into a condition which should be condemned by those who desire only that the best interests of the State should be subserved.

While it may be impossible to bring about an agreement between these two departments, both of which are filling, perhaps, important places in the system under which they are working, yet it is possible for the Legislature to adopt some means through which a more perfect system can be evolved and by which each of these departments may fill its appointed place in the school work without interference with the other. It has occurred to me in view of the failure

of passage of the bills which have been proposed, that this whole subject might properly be relegated to either a joint commission of the Legislature or to a commission to be appointed by the Executive to inquire into and to recommend such legislation as might be desirable for the betterment of the common and secondary schools of the State. I desire therefore to recommend this subject to your earnest consideration and to suggest one of the two remedies which I have outlined, in the hope that the friction which otherwise must continue may be avoided and recommendations made which will be fair to both departments involved, which will be followed by the enactment of laws at the next session of the Legislature that will place the school system of the State upon a more secure and stable foundation. I deem it wise therefore, to call this matter to your attention, in the hope that these suggestions may meet with your approval.[21]

B. B. ODELL, JR."

April 21. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. [See certificate of April 23.]

April 21. To the Legislature: Certifying to the necessity of the immediate passage of the appropriation bill. [Second certificate.] The bill was passed and became chapter 598 on the 14th of May.

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21 Acting on the Governor's suggestion, the Legislature appointed a joint committee composed of five Senators and seven members of the Assembly "with full power and authority to inquire into the educational interests of the State of New York." The committee was required to report to the Legislature not later than February 1, 1904, and to "recommend such legislation as in its judgment will be for the betterment of the educational interests of the State."

The committee submitted its report to the Legislature of 1904, and an act, chapter 40, was passed consolidating the two educational departments. For a further consideration of the subject, see 1904, note 4, *post*, p. 604.

April 21. To the Senate:

Veto of a bill entitled "An act to amend the insanity law, relating to the names of certain State hospitals, the powers of the commission in lunacy, the powers and duties of superintendents, and purchases for State hospitals."

"This bill, with some of whose features I am in accord, provides for such a radical departure from existing laws governing the institutions under the control of the Commission in Lunacy, that I have been led to disapprove it. It seeks in the first place to create two new and separate departments, with the additional expenses necessary for their maintenance, a proposal which does not seem to be warranted by the necessities of the service. It provides for a treasurer for all of the hospitals, which in itself would be desirable were it not for the fact that the bill proposes to place under his control all of the estimates of expenses, and authorizes him to make drafts upon the Comptroller by quarterly estimates instead of by monthly estimates, as heretofore. This might possibly lead to large and unnecessary drafts upon the Comptroller. This objection could perhaps be overcome, but a more serious feature of the bill is that which proposes to take away from the stewards of the various institutions the purchasing power and lodge it in an official to be appointed by the commission. This would be conferring upon this department power not possessed by any other department of the State government. It is a broader power than that possessed by the Fiscal Supervisor of the charitable institutions, whose authority goes no farther than the supervision of the purchases made by the stewards of the various charitable institutions under the authority of the boards of managers. This supervisory power, so far as the Commission in Lunacy is concerned, is now lodged in the lay member of the commission, who does the work subject to the approval of the full commission. The proposal in the bill is a departure that I do not

care to sanction, as it might lead to abuses and scandals which are almost impossible under the present system of conducting the affairs of these institutions.

For these reasons I have concluded to withhold my approval from the bill."

The bill was not passed over the veto.

April 22. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill making appropriations for buildings, repairs and improvements at the State hospitals for the insane. The bill was passed and became chapter 540 on the 11th of May.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. [Second certificate.] The bill was passed and became chapter 599 on the 14th of May.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending title 16 of chapter 556 of the Laws of 1894, known as the Consolidated School law. The bill was passed and became chapter 459 on the 7th of May.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, to provide for free tuition of nonresident pupils in schools maintaining an academic department, and making an appropriation therefor. The bill was passed and became chapter 542 on the 11th of May. [See note 14.]

April 23. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending section 2513 of the Code of Civil Procedure, in relation to the appointment and compensation of stenographers in surrogates' courts in certain counties. The bill was passed and became chapter 470 on the 7th of May.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amend-

ing the Tax law in relation to sales for unpaid taxes in the county of Clinton. The bill was passed, but not approved; it was included in the omnibus veto.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, amending the Liquor Tax law in relation to definitions, second deputy, powers, duties, salaries and expenses of special deputy commissioners and special agents, attorneys, excise taxes, depositing excise moneys, bonds, posting liquor tax certificates, penalties, convictions and reports by hotel-keepers. The bill was passed and became chapter 486 on the 8th of May.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, providing ways and means for the support of government. The bill was passed and became chapter 641 on the 21st of May.

April 23. The Legislature adjourned without day.

MEMORANDUM FILED WITH BILL BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 19.

Memorandum filed with approved Assembly bill, chap. 59, in relation to the streets and water pipes of Rochester.

"The bill under consideration proposes to amend the charter of the city of Rochester by conforming it to the second class cities charter, under which the commissioner of public works has charge of the streets, instead of the executive board, as it is called, under the charter of the city of Rochester. It also provides that water pipes shall not be laid down in the streets of said city without permission of the common council thereof.

The bill is opposed by representatives of a water company which is seeking to lay its pipes and mains in said city against the wishes of the city authorities. On the hear-

ing they claimed that this right was one which they were entitled to under the case of the village of Pelham Manor against the New Rochelle Water Company.[d] The situation here, however, differs considerably in principle from the one they refer to. In that case the road in question was under the jurisdiction of the village authorities, and there was no question of competition with an existing municipal plant, while the company represented on the hearing admittedly had as one of its objects the establishing of competition with the existing plant of the city of Rochester. That city has expended millions of dollars on its water system, and its legally authorized representatives decided after a fair hearing on the subject, that it was a proper one for the purpose of preventing such competition with its own waterworks. It is claimed by the mayor of Rochester, who appeared before me on the hearing, and it is not contradicted by the opponents of the measure, that the contracts which the new company have with outside villages and towns, would not in any way be interfered with if it were compelled to take a different route. It is no argument that it would cost the company more for the laying of mains and pipes, and that part of the question may therefore be eliminated from the consideration of this bill. The provision here sought for the care and oversight of the streets seems to have been inadvertently omitted from the charters of second class cities, although it appears in almost every charter of the other cities of the State of New York. The Constitution of this State has guaranteed to every locality the right to govern itself within prescribed rules and regulations as may be deemed wise.[e] And to ask the Executive to override this power seems to be both improper and undesirable. Under this constitutional right, which has been written into our law, the Legislature is prohibited from

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[d] (1893), 67 Hun, 98, aff'd 143 N. Y. 532.

[e] Const. 1894, art. 10, § 2. Art. 12, § 2.

granting to any person the right to lay down railroad tracks in the streets of a municipality without its consent,[f] and this seems to be analogous to the matter under consideration. It may be shown that railroads are as necessary for the convenience of outlying boroughs as other municipal requisites, and yet without proper compensation and the consent of the municipal authorities, even the charters which are granted by the Legislature have no force or effect in this respect.

It seems to me, therefore, the same protection might well be granted to the city in reference to gas, water, electric light and other needed facilities for the inhabitants. Both for the purpose of police protection and to secure just compensation and recompense from corporations which may desire the privilege of using the streets of a municipality, which should be determined by those legally charged with the responsibility for the government of the cities, this amendment is needed.

For these reasons Executive approval has been given."

THIRTY-DAY BILLS.

May 9.

Memorandum filed with approved Senate bill, chap. 486, amending the liquor tax law.

"Among the provisions of this bill is one providing for a limited sale of liquor by pharmacists in no greater quantity than one pint in each twenty-four hours to the same person, upon which an excise tax is levied in the sum of ten cents for each pint so sold, which is evidenced by the affixing of stamps issued by the State Commissioner of Excise. Aside from this feature of the bill, it carries many other essential provisions for the enforcement of the law. The fear has been expressed by some that its approval would authorize

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[f] Const. 1894, art. 3, § 18.

pharmacists in certain towns to sell liquor in larger quantities than they are now permitted to do where question three only of section sixteen of the local option provision of the Liquor Tax Law has been voted upon affirmatively. Question three reads as follows:

'Selling liquor as a pharmacist on a physician's prescription.— Shall any corporation, association, copartnership or person be authorized to traffic in liquors under the provisions of subdivision three of section eleven of the liquor tax law, namely, by selling liquor as a pharmacist on a physician's prescription, in (here insert the name of the town)?'

If such an interpretation of the proposed law were correct, or if I thought there was danger that by indirection it would interfere with the local option feature of the present law, which I have quoted, and thereby authorize the sale of liquor in quantities when the electors intended only to approve its sale upon physicians' prescriptions, I would not hesitate to disapprove it, and should await the action of another Legislature for provisions to make more certain the enforcement of those sections of the Liquor Tax Law which this bill provides for.

However, the language of the existing statutes in reference to the local option features, is so plain and the advice which has been given to me upon this measure so positive that it can only be operative where the electors have voted affirmatively upon question number two or where they have given an equivalent expression by an affirmative vote on questions one and four which permit the sale of liquor in quantities by others than pharmacists, that I am constrained to approve the bill. The provisions referred to above will not in any way affect the expression of the electors of the different towns of the State upon the several questions as submitted to them under the local option division of the Liquor Tax Law."

May 11.

Veto of items in Senate bill, chap. 589 — Appropriations for the custodial asylum for feeble-minded women.

"'For duplicate electric light unit, twenty-one hundred and fifty dollars; for salary of inspector to be appointed by State Architect, one thousand dollars.'

The immediate necessity for a duplicate electric lighting plant is not apparent.

The second item referred to is unnecessary because there are sufficient funds in the State Architect's office to provide for proper inspection without an additional appropriation.

Therefore these two items are disapproved."

May 13.

Veto of items in Senate bill, chap. 593 — Appropriations for the State fair.

"'For recoping the poultry building and work necessarily incident thereto, three thousand five hundred dollars; for removing railroad tracks from their present position and relaying them in more suitable and convenient place or places six thousand dollars.'

It seems to me that in view of the very liberal appropriations for this institution carried in other bills, these items should be disapproved."

May 13.

Veto of items in Assembly bill, chap. 591 — Appropriations for the Thomas Asylum for Indian children.

"'For new boiler, engine and dynamo connections and wiring and removing present power and electric light plant to new power house, ten thousand dollars; for laundry machinery, motor and moving to and installing the present equipment in new laundry, one thousand five hundred dollars.'

The present plant, while perhaps not as convenient as that which this improvement would provide, is quite sufficient, and the proposed alterations can well afford to wait in view of the liberal appropriations that have been made for this institution."

May 13.

Veto of items in Senate bill, chap. 592 — Appropriations for the Society for the Reformation of Juvenile Delinquents.

"'For additional window sash and casings, three thousand dollars; for rebuilding cottage for florist and gardener, two thousand five hundred dollars.'

These items are disapproved because there appears to be no particular or immediate necessity for them."

May 13.

Veto of items in Senate bill, chap. 590 — Appropriations for the House of Refuge for Women at Hudson.

"'For additional appropriation for reconstruction of administration building, two thousand dollars; for additional appropriation for reconstruction of prison, forty-five hundred dollars.'

These appropriations were originally intended because of the contemplated removal of the inmates of the Bedford Reformatory to this institution. In view of the fact that provision for so doing has not been made, the items are unnecessary, and are therefore disapproved."

May 13.

Veto of items in Assembly bill, chap. 583 — Appropriations for the New York State Woman's Relief Corps Home.

"'For direct connected engine and dynamo, duplicating the present one, one hundred and twenty-five volts, thirty

kilowatts, two thousand five hundred dollars; for vegetable cellar, one thousand two hundred dollars.'

These items are disapproved because there appears to be no immediate necessity for them."

May 13.

Veto of items in Assembly bill, chap. 584 — Appropriations for the New York State Soldiers and Sailors' Home at Bath.

"'For repairs and improvements to engineer's department, twenty thousand three hundred dollars; for bakery building, five thousand five hundred dollars; for house of detention and lockup with equipment, two thousand two hundred dollars.'

Liberal appropriations have been made for the maintenance of the Soldiers' Home, and it does not appear to me that these items are necessary at the present time."

May 13.

Veto of item in Assembly bill, chap. 585 — Appropriation for the Craig Colony for Epileptics.

"'For roads, walks, grading and planting, six thousand five hundred dollars.'

I am of the opinion that this appropriation is unnecessary, because the work provided for may be done by the inmates, even though it may not be accomplished as speedily."

May 13.

Veto of items in Assembly bill, chap. 586 — Appropriations for the Agricultural Experiment Station.

"'For labor and material for constructing a storage building for machinery and grain, three thousand dollars; for materials and labor necessary for installing a lighting and motor plant, including dynamo, storage battery, motors,

cable and wiring buildings, four thousand dollars; for labor and materials for making an extension of poultry houses, seven hundred dollars; for labor and materials necessary for building fence, six hundred dollars.'

Appropriations carried in other bills for this station, the expenses of which are constantly increasing, seem to be sufficient, and render the proposed expenditures at this time unnecessary. The items are therefore disapproved."

May 13.

Veto of items in Assembly bill, chap. 588 — Appropriations for the Western House of Refuge for Women at Albion.

"'For team of horses and carriage including robes, eight hundred dollars; for installing electrical apparatus and necessary wiring, thirty-five hundred dollars.'

These items do not appear to be of such urgent necessity as to require approval at the present time. They are therefore disapproved."

May 13.

Veto of item in Assembly bill, chap. 573 — Appropriation for a canal bridge at Mechanicville.

"'The sum of five thousand dollars for building a bridge over the Champlain canal connecting Burke avenue with Francis street in the village of Mechanicville, as provided in chapter six hundred ninety-four of the laws of nineteen hundred and one.'

This item is disapproved because it is carried in the supply bill and is therefore a duplication."

May 13.

Veto of items in Assembly bill, chap. 574 — Appropriations for the New York State School for the Blind at Batavia.

"'For laundry, power house, smoke-stack and coal pockets, twenty thousand five hundred dollars; for boilers and power house plant, eight thousand five hundred dollars.'

These items are disapproved because there is no immediate necessity for the enlargement of the buildings at this institution, except as such enlargement would add to the general appearance of the plant. The proposed improvements which are disapproved are planned upon such extravagant lines as not to be in harmony with the size of the school. It is hoped that plans which will be more in harmony with the existing school buildings may be prepared as a result of this disapproval."

May 13.

Veto of items in Assembly bill, chap. 575 — Appropriations for the New York State Reformatory at Elmira.

"'For domestic building, twenty-five thousand dollars (to cost ultimately one hundred and fifteen thousand dollars) in addition to the sum of five thousand dollars for temporary arrangements during construction; for new trade school building, thirty-seven thousand five hundred dollars; for repairs to electrical plant, rewiring chapel and auditorium, walls, *et cetera,* with the necessary cables to connect old system with new generators, five thousand dollars.'

These items are disapproved because the amount contemplated for these expenditures is in excess of the requirements of this institution.

The item for electric wiring is in addition to an allowance heretofore made, and which was said at that time to be ample to cover every requirement."

May 13.

Veto of items in Assembly bill, chap. 572, appropriations for the Rome State Custodial Asylum.

"'For employees' cottage to accommodate one hundred, forty thousand dollars; for grading and improving grounds,

twenty-five hundred dollars; for floors in electric light building, five hundred dollars; for graveling ice pond, three hundred dollars.'

These items are disapproved because there is no immediate necessity for them; or the amounts appropriated are excessive for the work contemplated.''

May 13.

Veto of items in Assembly bill, chap. 587 — Appropriations for the quarantine stations.

'' ' For equipping the buildings for cabin passengers with steam heating apparatus and pipe covering therefor, six thousand dollars; for a new boiler house, ten thousand dollars; for accessory appliances in boiler house, three thousand dollars; for general repairs at Swinburne island, twenty-five hundred dollars; for completing and repairing dock at Swinburne island, four thousand dollars.'

Liberal appropriations having been made for the quarantine stations at Hoffman and Swinburne islands, these items are not deemed of immediate necessity.''

May 13.

Veto of items in Assembly bill, chap. 598 — An appropriation act.

LIBRARIES.

'' First: Page five. ' For maintaining and improving the State Library used by the judges of the Court of Appeals, twenty-five hundred dollars or so much thereof as may be necessary.'

This is in effect an additional appropriation for the department of the State Board of Regents. Inasmuch as the regular appropriations have been heretofore made, this item is not considered necessary.

Page six. 'For the Court of Appeals Library situate in the city of Syracuse for the purchase of books for said library, the sum of two thousand dollars, or so much thereof as may be necessary, to be paid upon presentation to the comptroller of vouchers approved by the majority of the trustees in charge of said library.'

As the Court of Appeals never uses this library, and as they have facilities in every section of the State where they may sit, and ample provisions having been made for libraries in other judicial districts, this item is not considered necessary and is therefore disapproved.

COMPTROLLER.

Page fourteen. 'Of two transfer tax experts, one at one thousand seven hundred dollars, and one at one thousand four hundred dollars.'

There seems to be no real necessity for these two officials, as the transfer tax appraisers in the city of New York as well as the surrogates, have had ample provisions made for them for the performance of this work. In addition to this, there are other services at the command of the Comptroller for such inspection as he desires.

STATE ENGINEER AND SURVEYOR.

Page twenty-four. 'For salaries and compensation of the engineers employed upon the ordinary repairs of canals including the incidental expenses of such engineers, thirty thousand dollars or as much thereof as may be necessary.'

This item is disapproved as this covers work of the Public Works Department, and ample provisions have been made in the form of an appropriation for customary repairs upon the canals. There is no reason why compensation of the engineers should not be met from this fund for the purpose indicated in this item.

UNIVERSITY OF THE STATE OF NEW YORK.

Page forty-four. 'Sixty thousand and ninety-five dollars and forty-four cents or so much thereof as may be respectively received in fees is hereby appropriated as follows:'

This item is stricken out because the appropriations into which this amount has been subdivided have been reduced, and in order to conform to the appropriations which are hereby approved, this amount can in no other way be reduced.

Page forty-five. 'For expenses and temporary services in the administrative department, one thousand dollars, or so much thereof as may be necessary.'

'For grants and expenses for the benefit of schools of academic grade in the university, pursuant to statute, two thousand dollars, or so much thereof as may be necessary.'

'For expenses and temporary services in college and high school departments, twelve thousand dollars, or so much thereof as may be necessary.'

Liberal appropriations have been made for the purposes indicated in these items, and a sufficient corps of employees is at the command of the Regents for the services herein specified. For these reasons it does not seem to me to be ncessary at the present time to make these expenditures.

Page forty-six. 'For veterinary examinations pursuant to statute, five hundred dollars, or so much thereof as shall be available for proper expenses incurred in the administration of the veterinary law and the apportionment of the surplus among the veterinary medical examiners as therein provided.'

'For temporary services and expenses in the home education department, two thousand five hundred dollars, or so much thereof as may be necessary.'

'For temporary services and expenses of the state library, one thousand dollars, or so much thereof as may be necessary.'

'For expenses of the state museum, one thousand dollars, or so much thereof as may be necessary.'

These items are not considered to be necessary because ample provision has been made in other directions for this work. No injury to the public service will result from withholding approval from these items.

STATE COMMISSIONER OF AGRICULTURE.

Page fifty-one. 'For horticultural instruction, and for the purpose of conducting horticultural investigations and experiments, and for disseminating the information so obtained, as provided for in and pursuant to section eighty-five of the agricultural law, the sum of eight thousand dollars, or so much thereof as may be necessary.'

This item is disapproved because it is believed that the appropriations which are made for Cornell University for the purposes herein set forth are sufficient for the necessities of the horticultural interests of the State.

STATE ARCHITECT.

Page fifty-two. 'Of the structural engineer, two thousand dollars; of the sanitary engineer, two thousand dollars; of one stenographer, nine hundred dollars.'

'For office expenses, three thousand five hundred dollars, or so much thereof as may be necessary.'

These items are disapproved because they are not considered to be necessary for the proper working of this department. The services herein set forth can be obtained in other directions more economically than as here provided.

STATE SUPERINTENDENT OF BANKS.

Page fifty-five. 'For a contingent fund to be used by the superintendent of banks to pay the expenses of appraising property and such other contingent expenses in connection with the administration of the banking department as the

superintendent thereof shall deem wise and advisable to incur, or for the payment of examiners, the sum of two thousand dollars, or so much thereof as may be necessary, which sum shall be assessed upon and collected from the corporations, or a part of them, and refunded to the treasury, as provided in said banking law.'

This item is disapproved because the necessity for it is not apparent.

STATE COMMISSIONER OF EXCISE.

Page sixty-five. 'For the state commissioner of excise, four hundred thousand dollars, or so much thereof as may be necessary to pay refunds on surrender of liquor tax certificates, under the provision of the liquor tax law, to be paid by the state treasurer from excise moneys in his hands upon the certificate of the comptroller.'

The Comptroller's report shows that there are about $250,000 available in this fund at present. As the rebates from October 1st to May 9th of this year amount to but $110,000, it is considered that the necessity will not arise for the use of this item.

FOREST, FISH AND GAME COMMISSION.

Page sixty-five. 'For salary of the fish culturist, three thousand dollars; and for his expenses, nine hundred dollars, or so much thereof as may be necessary.'

For the past three or four years the State has not had a fish culturist in its service, and its interests have not suffered thereby. For that reason this item is disapproved.

'Of the assistant superintendent of forests, two thousand dollars; and for his necessary expenses, five hundred dollars, or so much thereof as may be necessary.'

From all of the information at hand I am convinced that the interests of the State do not require the creation of this new office.

COMMISSIONER OF LABOR.

Page seventy-five. 'For salaries and expenses of additional officers and employees rendered necessary by the duties imposed upon the department by chapter four hundred and fifty-four of the laws of nineteen hundred and two, four thousand dollars, or so much thereof as may be necessary.'

The law referred to is almost in effect a nullity. It would be almost impossible to reach the evils which it was designed to correct even with this appropriation. A similar item was disapproved in the last appropriation bill for the same reason.

Page seventy-six. 'For the expenses of the free employment bureau in Buffalo, three thousand dollars, or so much thereof as may be necessary.'

The operations of the Free Employment Bureau under this department in the city of New York have not been such as to justify establishing another in the city of Buffalo. The item for this reason is disapproved.

TAX COMMISSIONERS.

Page ninety-three. 'For the services and expenses of experts for appraisement and valuation, the sum of five thousand dollars, or so much thereof as is necessary, to be paid upon the certificate of the board of tax commissioners and the audit of the comptroller.'

This item is disapproved because there seems to be a sufficient force in this department to conduct a proper appraisement and to perform the duties which this item seeks to cover, without burdening the State with this unnecessary expense.

FISCAL SUPERVISOR OF STATE CHARITIES.

Page ninety-four. 'For books, blanks, binding, printing, making chemical analyses, traveling and other expenses,

including the services of a competent person to examine the books, papers and accounts of any institution, as provided in article three of the state charities law, four thousand five hundred dollars, or so much thereof as may be necessary.'

The necessity for this item is not apparent at present; it is therefore disapproved.

EDUCATIONAL INSTITUTIONS.

Page one hundred and one. 'For the state college of forestry, to be expended under the direction of the board of trustees of Cornell University, as provided by chapter one hundred and twenty-two of the laws of eighteen hundred and ninety-eight, ten thousand dollars.'

The operations of this College of Forestry have been subjected to grave criticism, as they have practically denuded the forest lands of the State without compensating benefits. I deem it wise therefore to withhold approval of this item until a more scientific and more reasonable method is pursued in the forestry of the lands now under the control of Cornell University."

May 13.

Veto of items in Assembly bill, chap. 599 — The supply bill.

JUDICIARY.

"Page four. 'For the miscellaneous reporter, for additional appropriation for clerk hire, obtaining copies of opinions, and office expenses, nine hundred and forty-five dollars, or so much thereof as may be necessary, to be paid by the state treasurer on the certificate of the reporter, and audit and certificate of the comptroller.'

This item is considered unnecessary because a bill has been approved which compels the transmission to the Miscellaneous Reporter of all opinions with which he has

to do. In addition this is an increase over the years preceding, which does not seem to be warranted.

'For the judges of the court of claims for the payment of miscellaneous expenses and disbursements of the court, the sum of six hundred dollars, out of which may be paid extra clerical services not to exceed two hundred and fifty dollars.'

This item is disapproved because the appropriation bill carries a contingent fund to cover the purposes specified herein."

LIBRARIES.

Page four. 'For the third judicial district library at Kingston for necessary rebinding of books belonging to said library, six hundred dollars.'

'For the supreme court library at Elmira situate in the sixth judicial district, for the purchase of books and necessary rebinding of books belonging to said library, the sum of two thousand dollars, to be paid on the presentation to the comptroller of vouchers verified by a majority of the trustees having charge of said library.'

'For the fifth judicial district library at Utica for the purchase of books and necessary rebinding of books belonging to said library, the sum of one thousand dollars, to be paid on presentation to the comptroller of vouchers verified by a majority of the trustees having charge of said library.'

'For the supreme court library at Delhi, situate in the sixth judicial district, for the purchase of books and the necessary rebinding of books belonging to said library, seven hundred dollars, or so much thereof as may be necessary, to be paid upon the presentation to the comptroller of vouchers verified by the justice of said court residing in the county of Delaware.'

These items are all disapproved because in the appropriation bill ample provision has been made for these purposes.

SECRETARY OF STATE.

Page eight. 'The sum of five hundred and sixty-nine dollars and ninety-eight cents, being the unexpended balance of appropriations for salaries under chapter six hundred and forty-four of the laws of nineteen hundred and one, and the sum of two hundred and eight dollars and fifty cents, being the unexpended balance of appropriation for temporary services under chapter six hundred and forty-five of the laws of nineteen hundred and one, are hereby reappropriated for temporary services and clerk hire.'

This item is disapproved because ample provision has been made in the appropriation bill for the necessary work of this department.

'For the construction of a gallery and book cases in the corporation department of the secretary of state, the sum of two thousand five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the secretary of state on the audit of the comptroller.'

This item is disapproved because there appears to be no immediate necessity for this work.

COMPTROLLER.

Page ten. 'For temporary clerical and stenographic services in the New York office of the corporation tax bureau, the sum of nine hundred dollars, or so much thereof as may be necessary.'

This item is disapproved because it provides virtually for the creation of a new office, the necessity for which is not apparent.

Page twelve. 'For deficiency in appropriation for special accountant in the comptroller's office, from April first nineteen hundred and three, to September thirtieth, nineteen hundred and four, the sum of four hundred and fifty dollars, or so much thereof as may be necessary.'

This item is disapproved because it provides virtually for an increase of salary for which there does not appear to be sufficient justification.

'Out of which sum the comptroller is authorized to pay the accountant in the office having general supervision of such examinations not to exceed the amount of two hundred dollars per annum.'

This item is disapproved because it provides virtually for an increase of salary for which there is no warrant.

'The sum of nine hundred and seventy-five dollars and five cents, being the unexpended balances of appropriations made by chapter six hundred forty-four of the laws of nineteen hundred and one, for services of employees in the comptroller's office is hereby reappropriated for clerical, messenger and stenographic services and other necessary expenses of said office.'

This item is disapproved for the reason that there seems to be no necessity for this increase in the clerical force of that department.

Page fourteen. 'For the comptroller, for payment to the treasurer of Hamilton county of the amount credited said county pursuant to chapter two hundred and seventeen of the laws of eighteen hundred and eighty-nine as amended by chapter five hundred and fifteen of the laws of nineteen hundred and one, seventeen thousand forty-eight dollars and thirty cents.'

This item is disapproved because the liability of the State for this item has not been presented in such a way as to convince me of the wisdom of this appropriation.

'For John W. Ennis for services as confidential inspector in the bureau of charitable institutions, comptroller's office, from March first, nineteen hundred and one, to July eighth, nineteen hundred and one, at the rate of

one hundred dollars per month, the sum of four hundred and twenty-two dollars and sixty cents, or so much thereof as may be necessary.'

This item is disapproved because it appears to be a virtual increase in salary for which there is no warrant.

ATTORNEY-GENERAL.

Page sixteen. 'For the attorney-general, the sum of ten thousand dollars, or so much thereof as may be necessary to pay attorneys, counsel and commissioners employed by him in pursuance of law, on the audit of the comptroller.'

This item is disapproved because the necessity for it is not apparent.

Page eighteen. 'For Joseph A. Burr, for services and disbursements as attorney for Norman S. Dike who was appointed by the governor as sheriff of Kings county in the place of Charles Guden, removed from said office by the governor in the proceedings entitled "In the matter of the application of Guden" and "The people ex rel. Falk versus Dike," the sum of twenty-five hundred dollars or so much thereof as may be necessary, the same to be paid upon the approval of the governor and the audit of the comptroller and upon the filing of a receipt in full for all such services and disbursements.'

There is no authority either in the Attorney-General's department or the Executive department for the employment of Mr. Burr. In view of the lack of authority to so employ Mr. Burr, the item is disapproved.

STATE ENGINEER AND SURVEYOR.

Page nineteen. 'For the state engineer and surveyor for traveling expenses and disbursements incurred by his department in making examinations, surveys and maps

for restoring and placing monuments on the boundary lines of the state and for expenses incurred for labor and material in procuring and placing such monuments pursuant to chapter four hundred and twenty-one of the laws of eighteen hundred and eighty-seven, the sum of three thousand dollars or so much thereof as may be necessary, payable from the general fund.'

This item is disapproved because liberal appropriations have been made theretofore for this purpose, some of which is now available. There is therefore no apparent necessity for this item.

Page twenty. 'For salaries and expenses of the chief bridge designer and inspector with the necessary assistants, draftsmen and supplies, the sum of ten thousand dollars, or so much thereof as may be necessary.'

Until the policy of the State has been decided with reference to the future of the canal system, it seems to me unwise to continue bridge construction, except where absolutely necessary. For that reason this item appears to be unnecessary, and is therefore disapproved.

Page twenty-one. 'For the state engineer and surveyor for the purpose of constructing balconies for the storing of records, and other necessary improvements, alterations, additions and repairs, in the offices of his department, the sum of forty-five hundred dollars, or so much thereof as may be necessary.'

'For the state engineer and surveyor for making such surveys in the forest preserve or on adjoining lands as may be necessary to the work of the forest, fish and game commission, the sum of two thousand dollars, or so much thereof as may be necessary.'

These items are disapproved because they are considered unnecessary at the present time.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

Page twenty-three. 'For the state superintendent of public instruction for defraying the expenses incurred in defense of mandamus proceedings in the case of the people of the state of New York upon the relation of James E. Waters against Charles R. Skinner, state superintendent of public instruction of the state of New York, and John R. Reed, James S. Cooley, and others as board of managers of the New York state normal and training school at Jamaica, and Archibald C. McLachlan, principal of said school, the sum of seventy-five dollars.'

The Department of Public Instruction is equipped with a law department at an expense of nearly five thousand dollars annually. There seems to be no reason why this expense should have been incurred in the manner set forth in this item. It is therefore disapproved.

'For deficiency in appropriation for the salary of the chief of the statistical bureau from May first to September thirtieth, nineteen hundred and three, one hundred and twenty-five dollars.'

This is virtually an increase in salary, and for that reason is not approved.

STATE ARCHITECT.

Page twenty-six. 'For the state architect for deficiency in office expenses, two thousand dollars, or so much thereof as may be necessary.'

'For the state architect for deficiency in the salaries of two stenographers, two hundred dollars, or so much thereof as may be necessary.'

'For the state architect, the sum of nine hundred and seventy dollars and thirty-six cents, or so much thereof as may be necessary, being the unexpended balance of the sum of two thousand dollars appropriated by chapter five hundred and ninety-three of the laws of nineteen hundred

and two for consulting experts and additional draftsmen, is hereby reappropriated for consulting experts and additional services.'

Inasmuch as the State Architect's department has been liberally provided for in the appropriation bill, and as there is no apparent necessity for these items, they are not approved.

CIVIL SERVICE COMMISSION.

Page twenty-eight. 'For the civil service commission, for deficiency in appropriation for books, printing, stationery, postage, expenses incurred in the inspection or investigation of the manner of the administration of the civil service law and rules, for special, occasional and temporary clerical services or other expenses of said commission, one thousand dollars, or so much thereof as may be necessary.'

Ample provision having been already made for the expenses of this commission, this appropriation does not seem to be necessary. It is therefore not approved.

FOREST, FISH AND GAME COMMISSION.

Page thirty. 'For the purpose of collecting seeds and seedlings, growing and transplanting trees in the line of reforesting the burned, barren or denuded lands in the forest preserve, and for the collection of statistical information and the publication and distribution of pamphlets on forestry subjects as provided by section two hundred and twenty, chapter twenty, laws of nineteen hundred, six thousand dollars.'

'For repairs, equipment and construction of rearing ponds at the Catskill hatchery in the town of Middletown, three thousand five hundred dollars.'

These items are not approved because they are not considered necessary at this time.

Page thirty-one. 'For the construction of a mezzanine floor or gallery and the building of suitable filing cases therein in the office of the forest, fish and game commission, one thousand dollars, or so much thereof as may be necessary.'

'The sum of two thousand one hundred and forty-nine dollars and seventy-three cents, being the unexpended balance appropriated by chapter one hundred and forty-seven, laws of nineteen hundred and one, for the purpose of restocking the Adirondack region with wild moose, is hereby reappropriated therefor.'

These items are of questionable use, and are therefore not approved.

Page thirty-two. 'For the salary of an assistant superintendent of forests, one thousand dollars, and for his expenses, two hundred and fifty dollars, or so much thereof as may be necessary.'

An item covering the same purpose having been disapproved in the appropriation bill, there is no necessity for the approval of this item. It is therefore not approved.

STATE HISTORIAN.

Page thirty-three. 'For the state historian for the translation of copied documents in the possession of the ecclesiastical archives of Amsterdam and the Hague, relating to the colonial history of the state of New York, and for their preparation for publication, the sum of four thousand five hundred dollars, or so much thereof as may be necessary.'

This item is not approved because when the last appropriation was made for translating these records it was stated that that appropriation would complete the work.

COMMISSIONER OF LABOR.

Page thirty-four. 'For salaries and expenses of officers and employees necessary in the enforcement of chapter four hundred and fifty-four of the laws of nineteen hundred and two, two thousand dollars, or so much thereof as may be necessary.'

This item is disapproved for the reasons given in withholding approval from a similar item in the appropriation bill for the coming fiscal year.

'For cataloguing of library of department of labor, two hundred and fifty dollars, or so much thereof as may be necessary.'

This item is disapproved because there seems to be no reason why this work cannot be performed by the regular force of employees of that department.

'For expenses of a free employment bureau in Buffalo, including rent, furniture, stationery, books, blanks, telephone, advertising and other office expenses, two thousand dollars, or so much thereof as may be necessary.'

This item is disapproved for the same reasons set forth for disapproving an item for the same purpose in the appropriation bill.

'The sum of five hundred dollars, being a portion of the unexpended balance of the appropriation made by chapter five hundred and ninety-four, laws of nineteen hundred and two, for the expenses of the special agents and the deputy factory inspectors while engaged in the discharge of their official duties, is hereby reappropriated for deficiency in appropriation for the expenses of the commissioner of labor for expenses for the current fiscal year.'

The head of a department should not incur expenses beyond the amount of his appropriations. The approval of this item would but encourage similar deficiencies in the future. The item is not approved.

STATE COMMISSION IN LUNACY.

Page thirty-five. 'The sum of thirty-eight thousand two hundred and eighteen dollars and twenty-three cents, being the unexpended balance of the appropriation of two hundred and sixty-five thousand dollars made by chapter six hundred and forty-four of the laws of nineteen hundred and one for the salaries of officers of the state hospitals for the year ending September thirtieth, nineteen hundred and two, is hereby reappropriated and made available for readjustment by the state commission in lunacy of the wages of ward attendants in the state hospitals and for the payment of additional employees required in the office of the state commission in lunacy by reason of the amendments to the insanity law made by the legislature of nineteen hundred and three for the period between July first and September thirtieth, nineteen hundred and three.'

This item is disapproved because ample provisions were made for salaries in the various institutions, and this item would in effect increase salaries which are already increased in the appropriation bill by the sum of about four hundred thousand dollars. There have been no amendments to the lunacy laws which render additional office force necessary. For these reasons this item is not approved.

'For the employment of clergymen at the Willard state hospital, the sum of one thousand dollars, or so much thereof as may be necessary, the same to be apportioned between the resident clergymen of the village of Ovid as the State Commission in Lunacy may direct, and to be paid from the appropriation for the state care of the insane.'

This is the only institution in the State which has a separate appropriation for this purpose. As there are ample funds at the command of the Lunacy Commission, this item should not be carried separately in the supply bill. It is therefore disapproved.

NATIONAL GUARD.

Page thirty-seven. 'The sum of five thousand dollars, being a portion of the unexpended balance of the appropriation of sixty thousand dollars made by chapter four hundred and twenty-two of the laws of nineteen hundred and two, for the adjutant-general, to enable him to replace state property destroyed by fire in the seventy-first regiment armory, is hereby reappropriated for the adjutant-general to replace personal loss of military property incurred by the several organizations of the state under chapter four hundred and sixteen, laws of nineteen hundred and two.'

This item is disapproved because a sum was appropriated originally for the payment of personal losses incurred in the Seventy-first Regiment armory fire. To seek now to extend this is not only undesirable but also in the direction of opening up expenditures which might reach undue proportions.

DEPARTMENT OF STATE PRISONS.

Page thirty-nine. 'For the superintendent of state prisons, the sum of sixteen thousand two hundred and thirteen dollars and forty-three cents, being the unexpended balance appropriated by chapter three hundred and forty-eight of the laws of nineteen hundred for temporary shop building to be so constructed that it may be utilized hereafter for the dining room and kitchen of said institution, is hereby reappropriated and the additional sum of nine thousand dollars is hereby appropriated for erection and completion of a mess hall, kitchen and bakery for the Eastern New York reformatory.'

It is not desirable to make this appropriation at the present time as this is an improvement which can well afford to wait. The item is therefore not approved.

Page forty. 'For the superintendent of state prisons for the purchase of the perpetual right to use in the penal

institutions of this state all patents upon apparatus used or intended, designed or applicable to use for electrocution in the state prisons, the sum of ten thousand dollars, appropriated for the purchase of such patents by chapter five hundred and ninety-five of the laws of nineteen hundred and two is hereby reappropriated for the purpose above stated, but no portion of said money shall be applicable to the purpose herein mentioned until the superintendent of state prisons shall have entered into a good and sufficient contract with the patentee and owner or owners in a form approved by the attorney-general conditioned for the sale of such rights in and to said patents and rights, and also further conditioned for the complete instruction and thorough education of such competent person or persons as shall be designated by said superintendent of state prisons in the working and application of said patented devices, together with a complete explanation of the method and principal employed in the application and use of said devices, also the process and method through and by which said invention, discovery and device was originated and has been developed, together with all improvements by means of which said patent or any of the appliances whether patented or unpatented may have been used or modified.'

This item is disapproved because in the appropriation made last year it was stipulated to be for the sole right to use the apparatus, etc., for electrocutions. By this item it is sought to confer a perpetual right to use this apparatus. In its present form I consider it objectionable and therefore disapprove it.

QUARANTINE.

Page forty-four. 'For the health officer of the port of New York for the construction of a landing at the health officer's station at Clifton, Staten Island, upon plans approved by the state engineer and surveyor, thirty-six thou-

sand dollars, or so much thereof as may be necessary, but no part of said appropriation shall be available for the said improvement until a contract to do the work within any appropriation has been made and the performance thereof secured by a bond to be approved by the comptroller.'

This item is considered unnecessary at the present time. It is therefore disapproved.

RAILROAD COMMISSION.

Page forty-four. ' The sum of ninety-two thousand five hundred dollars to carry into effect the provisions of chapter seven hundred and fifty-four of the laws of eighteen hundred and ninety-seven, entitled "An act to amend the railroad law and the acts amendatory thereof relative to grade crossings," and acts amendatory thereof.'

While the work contemplated by this item is desirable, yet in view of the fact that other liberal appropriations have been made for this purpose, it is not approved.

QUARANTINE.

Page forty-three ' For the commissioners of quarantine, for the deficiency in the salaries and maintenance account for the fiscal year ending September thirtieth, nineteen hundred and three, two thousand dollars, or so much thereof as may be necessary.'

There seems to be no good reason why this item should be allowed because as before stated all departments should keep their expenses within their appropriations.

STATE RESERVATION AT NIAGARA.

Page forty-six. ' For the commissioners of the state reservation at Niagara for roads, five thousand dollars.'

This proposed improvement is not of such pressing character as to demand an appropriation at this time.

SUPERINTENDENT OF PUBLIC WORKS.

Page forty-seven. 'For the cleaning out of state ditches along the line of the Erie canal and Champlain canal which became filled during the progress of the canal enlargement work, in order to prevent further overflow of land and damage to private property in the vicinity of said ditches, seventy-two thousand three hundred and fifty-eight dollars or so much thereof as may be necessary, said work to be progressed by the superintendent of public works at as early a date as conditions make favorable.'

This item is disapproved because it is not considered necessary at this time.

Page forty-eight. 'For the superintendent of public works, the sum of twelve thousand dollars or as much thereof as may be necessary for the purpose of replacing the present cast iron bridge over the Erie canal at Willis avenue and the Van Vleck road in the county of Onondaga by a wrought iron or steel bridge together with the necessary approaches, abutments and structures on plans to be approved by the superintendent of public works.'

'For the superintendent of public works for filling in portions of the Clark and Alvord mill race and side cut canals west of Park street, in the first ward of the city of Syracuse and for replacing the present bridges at that point with solid material and bringing the same to the existing street grade, the sum of three thousand six hundred and forty dollars and three cents or so much thereof as may be necessary in addition to the sum of one thousand three hundred and fifty-nine dollars and ninety-seven cents appropriated by chapter six hundred and forty-five, laws of nineteen hundred and one for building retaining walls and filling in on the north side cut of the Oswego canal at Syracuse, at a point known as Spring street, which sum remaining is hereby reappropriated for the purposes described above.'

Until the State's policy has been determined as it will be after the proposed canal improvement plan shall have been submitted to the electors of the State, bridge building and improvements of that character should not be indulged in. For that reason these items are stricken out.

Page fifty-one. 'For the superintendent of public works the sum of six thousand dollars or so much thereof as may be necessary is hereby appropriated for repairing and improving the Castorland dike between the main shore at a point opposite the Castorland depot and the bridge crossing Black river between the towns of Croghan and Denmark in Lewis county, and for raising the dike road in the town of Croghan between Naumburg and the said bridge, the work to be done upon plans to be furnished by the state engineer and surveyor.'

'For the superintendent of public works for the dredging of the inlet to Cayuga lake at or near the city of Ithaca and for repairing the state pier at the mouth of Cayuga lake inlet as provided by chapter four hundred and thirteen of the laws of nineteen hundred and two, the sum of two thousand dollars or so much thereof as may be necessary in addition to the amount appropriated by said chapter.'

Page fifty-three. 'For the superintendent of public works for cleaning the Saranac river and its shores of dead and rotten timber between Lake Flower and the state dam on said river above Saranac Lake village, five thousand dollars or so much thereof as may be necessary.'

These items are disapproved because there does not seem to be any particular necessity for them at the present time.

MISCELLANEOUS.

Page sixty-five. 'For George H. Thornton, for balance due for reporting senate committee on cities during the years eighteen hundred and ninety and eighteen hundred

and ninety-one, the sum of sixteen hundred dollars, which shall be paid and accepted in full for all services and disbursements connected with the above investigation.'

I understand that the bill which provided for the payment of Mr. Thornton's original bill carried a provision that the amount thus appropriated should be in full settlement of his charge. For that reason I withhold approval from this item."

May 14.

Veto of items in Assembly bill, chap. 600 — The supplemental supply bill.

LEGISLATURE.

" Page three. ' For W. M. Spaulding, counsel to the committee on privileges and elections, for counsel fees in the contest of Edwin J. Chapman versus John Hill Morgan, two thousand five hundred dollars, which sum shall be paid upon the approval of the chairman of the committee on privileges and elections, and the audit of the comptroller.'

This item is disapproved because the charge appears to be excessive. This contest was not prolonged nor were there numerous hearings in this matter.

Page three. ' To the clerks of the senate and assembly for the preparation and printing of ten thousand copies of the report of the board of general managers of the state exhibit at the Pan-American Exposition held in Buffalo in the year nineteen hundred and one and whose report was transmitted to the legislature in the year nineteen hundred and two, to be printed by the contractor to do the legislative printing for that session, under the direction of said clerks and distributed by them to the members of the legislature of nineteen hundred and two and three, the sum of ten thousand dollars, which sum is to be payable from the appropriation for legislative printing for the year nineteen hundred and three as provided by chapter five hundred and ninety-three of the laws of nineteen hundred and two.'

While it is perhaps desirable to have this report printed, yet at the present time it is not necessary and this item is disapproved.

COMPTROLLER.

Page five. 'For the comptroller, for the completion of the work of compiling and arranging the documents relating to the war of eighteen hundred and twelve, and for binding and indexing the same, the sum of fifteen hundred dollars or so much thereof as may be necessary.'

At the session of the Legislature of 1902 a similar amount was appropriated and approved for this purpose with the distinct understanding that it should complete the work. I have nothing before me now to indicate why the agreement made last year was not carried out. The item is therefore not approved.

STATE ENGINEER AND SURVEYOR.

Page six. 'For the state engineer and surveyor for the improvement of the public highways under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof four hundred thousand dollars or so much thereof as may be necessary.'

This item is not approved because of lack of funds.

SUPERINTENDENT OF PUBLIC WORKS.

Page eleven. 'For the superintendent of public works, for the purpose of conducting practical tests of apparatus designed to employ electricity as a motive power for operating boats and craft navigating the canals of the state for commercial purposes, as provided by section thirty-eight, article three, chapter three hundred and thirty-eight of the laws of eighteen hundred and ninety-four, in order to determine the efficiency, economy and practical ability of such

motive power as applied to canal navigation, the sum of twenty-five thousand dollars or so much thereof as may be necessary.'

Until the policy of the State has been determined as to canal enlargement, and in view of the fact that there are many demands of a more urgent character upon the State, it is not deemed wise to approve this item at this time.

Page fourteen. 'For the construction of an aqueduct with a steel trunk for the passage of the waters of the Oneida creek under the Erie canal at Durhamville, on the line between the counties of Madison and Oneida, according to plans and specifications therefor to be prepared by the state engineer and surveyor, the sum of fifty-seven thousand dollars or so much thereof as may be necessary, no part of which shall be available except for necessary advertising, engineering, surveys and the necessary plans, until a contract or contracts shall have been entered into between the state and some responsible person, firm or corporation for the completion of such work at a cost within the amount hereby appropriated.'

The Superintendent of Public Works believes that he has sufficient funds to properly strengthen this part of the canal without this appropriation. It is therefore not approved.

DEPARTMENT OF PUBLIC BUILDINGS.

Page fourteen. 'The sum of eight thousand dollars, being a portion of the unexpended balance of the appropriation made by chapter six hundred and forty-four of the laws of nineteen hundred and one, for lighting and necessary fixtures and appliances therefor, is hereby reappropriated for the services of necessary employees in the care and maintenance and for furnishings, fixtures and repairs of the public buildings for the current fiscal year.'

This item is disapproved because of a sufficiency of appropriations in other bills.

MISCELLANEOUS.

Page eighteen. 'For the attendant to the court of appeals designated as law clerk, in addition to his salary for the fiscal year commencing October first, nineteen hundred and three, five hundred dollars, payable monthly.'

This item is disapproved because it is virtually an increase of salary for which no good reason has been advanced."

May 21.

Veto of Senate bill in relation to consents for railway construction.

"This bill seeks to amend section ninety-three of the railroad law in relation to consents heretofore given by local authorities and to extend the time for the completion of the work in which this article can be complied with. A reference of this bill to the Attorney-General has elicited the following opinion:

'If the Legislature may modify the consent of a city, town or village given as the Constitution requires in order to authorize the construction of a railroad within its limits,[g] then, certainly, the statute attempting to do this affects the affairs of such a city, town or village and is legislation contemplated by section two of article twelve of the State Constitution. If it can be ascertained what cities included within the description given in the statute have given consents which are to be affected by this legislation, this bill should be transmitted to each such city for its consideration.'

In view of the above opinion, therefore, I am led to the conclusion that the bill is not properly before me for my official action, and is therefore disapproved."

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[g] Const. 1894, art. 3, § 18.

May 21.

Memorandum filed with approved Senate bill, chap. 638, regarding tuberculosis hospitals.

"This is a bill to regulate the establishment of tuberculosis hospitals in the various counties of the State by municipalities, corporations, associations, or individuals. It seeks to prevent the erection of such hospitals without the consent of the board of supervisors of the county or the town board of the town in which the hospital is to be erected. It does not apply to the State and therefore in no way interferes with the tuberculosis sanitariums which are now under way and which are to be continued as the future policy of the State for the treatment of this disease. Under existing law municipalities of the first class are not permitted to establish such hospitals outside of their own limits in cities or incorporated villages, or in towns without the consent of the local board of health and the approval of the State Commissioner of Health. This bill substitutes for the State Commissioner of Health, the local board of supervisors of the county, and for the local board of health, the town board, thus making secure to the localities the same home-rule principles which are guaranteed to cities of all classes. Under these conditions it does not prevent the location within the State of hospitals for the treatment of tuberculosis, and but slightly broadens the protection of town and property interests. In thus making provisions for safeguarding these interests, there has been no material change from the existing law and unnecessary burdens have not been placed upon municipalities or those who desire to establish such hospitals.

The same Legislature which passed this bill also authorized liberal expenditures for the establishment of a tuberculosis hospital upon its own ground in the Adirondack region, and proposes to make provision for the care of all

patients that may be sent there by the various municipalities. There is no interference with the rights of those who do not desire to take advantage of charitable treatment and who are able to provide from their own means for their care and treatment. I cannot see that any great injury will result to the work which the State and individuals have undertaken. On the contrary, I can see very urgent reasons why the property interests and rights of individuals which are safeguarded in this act should receive the thoughtful consideration of the Legislature and the Executive.

After viewing the bill from all standpoints and consulting with those who are interested in this work, as a matter of equity and justice I have concluded to approve the bill"

May 21.

Memorandum filed with approved Senate bill, chap. 640, in relation to investments by savings banks.

"I have given very careful thought to this bill and have considered the objections of the Savings Banks Association of the State against its enactment into law, as well as the requests from the savings banks of the county of Erie for its approval. Under existing law, a railroad whose bonds are authorized as savings banks investments, must have a capital stock of at least one-third the amount of its bonded debt, and also must have paid dividends of at least four per cent. for a term of ten years.

The railroad* which this bill affects has a capital stock of $250,000. To comply with the existing statute, it should have a capital stock of at least $334,000 as its bonded debt is $1,000,000. In view of the fact that instead of paying four per cent. dividends, it is and has been paying seven per

* The Buffalo Creek Railroad Company.

cent. dividends upon $250,000 for many more years than are required in the statute, it would seem to be an absolutely safe investment. In addition it may be said that it probably can never be affected by competition, because of its route and franchises. The sufficiency of the investment being vouched for by the savings bank interests in Buffalo who desire the opportunity to invest in these bonds, I can see no great harm which can come from the enactment of the bill. It is therefore approved."

May 22.

Memorandum filed with approved Assembly bill, chap. 641, fixing the State tax rate.

"This act fixes the tax rate at thirteen one-hundredths of a mill for the fiscal year beginning October 1, 1903. This statement alone is sufficient to justify commendation of the wisdom and economy of the Legislature of 1903. Except for the constitutional requirement which makes necessary the levying of this small tax, the pledges of the dominant party for the total abolition of a direct tax would have been accomplished at the present session of the Legislature. With the adoption in 1905 of the amendment to the Constitution, which will permit the payment of this tax from the general fund, there will be no longer the necessity for the levying of a direct tax for the ordinary expenses of State government.[22]

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[22] The only tax imposed by this act, chapter 641, was the amount required by the $9,000,000 canal act of 1895, chapter 79, which required an annual tax of thirteen one-hundredths of a mill for the purpose of creating a sinking fund as provided by the Constitution, article 7, section 4. This section was amended in 1905, by extending the debt period, and at the same time a new section, 11, was added to the article providing that any debt previously or subsequently incurred might be paid from the general fund.

The total of all appropriation bills sent to the Executive by the Legislature of 1903 was		$25,652,061 70
Items of direct appropriation disapproved amounted to	$2,057,913 93	
The total of reappropriated items disallowed was	96,705 28	
Making the gross amount of disapproved items		2,154,619 21
Leaving the total net appropriations		$23,497,442 49

The total of appropriations for the year 1902 was $21,996,905.93, showing an increase this year of $1,500,537.77.

While these figures might lead to the belief that the increase was due to extravagance by the Legislature, yet when the items are analyzed it will be found that there has been no extravagance in providing for the ordinary expenses of the State. The appropriations as compared with last year show the following increases:

For enlarging the scope of the tuberculosis hospital, $115,000.

For the Home for Crippled and Deformed Children, $50,000.

For the purchase of a farm for the Rochester Industrial School, $125,000.

For the purchase of a new site for a new hospital for the insane, $50,000.

For the erection of new administration buildings and for isolation hospitals for infectious and contagious diseases, and for buildings to provide for about fifteen hundred additional patients, as well as to care for the ordinary increase in expenses, $1,303,713.77 of additional appropriations were granted for the Lunacy Department.

For academic education, $100,000.

For increase in the appropriations for normal schools, $78,000.

For new dormitories at the Craig Colony, $40,000.

For increased expenses of the Judiciary, $27,475.

For grade crossings, $75,000.

For new armories, $100,000.

For additional land at Creedmoor and for rebuilding of armories, $105,000.

For increased share of the State's expense towards the repairing of roads under the Plank-Fuller laws, $103,783.33.

These items aggregate $2,343,973.10. It will be seen that the increase of a million and a half dollars over last year's appropriations is more than accounted for and that the statement which has been made that the Legislature was not extravagant is borne out. This has all been accomplished, and there will be a surplus in the State Treasury on the first day of October, 1904, after providing for all appropriations now in force, of six millions of dollars approximately, thus making certain that with no greater expenditures and with estimated receipts of twenty-two and a half millions of dollars for the year beginning October 1, 1904, a tax rate will be unnecessary again next year, while a surplus of between five and six millions of dollars will be left in the treasury for the new administration which will take office in 1905.

These facts, while satisfactory, do not measure fully the work of the Legislature. As affecting the city of New York by the enactment of bills permitting the use of the sinking fund in excess of requirements and reducing the percentage for the school teachers' tax from four to three mills, and by the abolition of a direct tax which New York receives the benefit of for the first time this year, the taxpayers of that city will be relieved to the extent of about sixteen millions of dollars in taxes.

In addition to this the Legislature has provided for the education of children, for the protection of the young against those who would use their labor at the expense of their health and education. In broadening the scope of charitable work in other directions the Legislature has also responded, to the popular will. Its record will compare favorably with that of any of its predecessors and the laws as written in the statute books are a sufficient refutation of the criticisms which have been made from time to time upon its action."

May 22. The omnibus veto included the following bills:

"The following bills did not receive Executive approval because they were vetoed by the respective mayors of the cities to which they were referred:"

A. 986. Relating to appointments of fire department employees to the uniform force, New York City.

A. 1926. Amending New York charter relative to piers for recreation.

A. 2085. Amending Greater New York charter as to qualifications of patrolmen and firemen.

A. 1851. Amending Greater New York charter as to police and fire department promotion for bravery.

A. 1957. Amending Greater New York charter as to preference in fire department of volunteer firemen.

A. 1862. Amending Greater New York charter as to salary of presidents of boroughs.

A. 1912. Amending Greater New York charter as to municipal courts.

A. 1555. Amending Greater New York charter as to pensions of disabled policemen.

A. 1190. Amending Greater New York charter relative to the code of ordinances.

A. 1852. Amending Greater New York charter as to acquirement of lands by board of estimate and apportionment.

A. 1504. Amending Greater New York charter as to purchase of supplies and public armories.

A. 747. Relief of Fireman Thomas F. Murphy, New York City.

A. 436. For relief of Fireman James F. Kenehan, New York City.

A. 1302. For relief of ex-Policeman Andrew Bradley, New York City.

A. For relief of ex-Policeman Michael Linehan, New York City.

A. 964. For relief of ex-Policeman Solomon Cohen, New York City.

A. 257. For relief of ex-Policeman William A. Taylor, New York City.

A. 635. For relief of ex-Policeman John W. Pinkley, New York City.

A. 738. For relief of Richard E. Taylor, New York City.

A. 1838. For the relief of William H. Hart, New York City.

A. 1236. For relief of Valentine M. Collins, New York City.

A. 831. For relief of John A. Turner and James Macdonald, New York City.

A 1019. For relief of Joseph Palladino, New York City.

A. 1952. For relief of William H. McDowell, New York City.

A. 1813. For relief of ex-Policeman Edward J. Barrett, New York City.

A. 1764. As to annual installment payments, board of estimate and apportionment, New York City.

A. 550. Amending Greater New York charter as to salaries of justices municipal court.

A. 2058. Amending act relative to sheriff of New York county.

A. 1499. To provide headquarters for exempt firemen's benevolent fund association, Bronx Borough.

A. 267. Amending Greater New York charter as to compensation of fire department chaplains.

A. 2002. Amending Greater New York charter as to compensation of board of taxes and assessments.

A. 1958. Amending Greater New York charter as to recreation piers.

A. 1999. Amending Greater New York charter as to qualifications of patrolmen and firemen.

A. 1640. For acquisition of playgrounds in City of New York.

A. 827. Amending Greater New York charter as to powers of fire commissioner.

A. 2047. Amending Greater New York charter as to qualifications of city magistrate.

A. 922. As to improvement of Remsen Avenue, Borough of Brooklyn.

A. 1526. As to Atlantic Avenue and the Long Island Railroad, Borough of Brooklyn.

A. 2048. Authorizing East River Gas Company in Long Island City.

S. 771. Relief of A. Emerson Palmer, New York City.

S. 979. For relief of William M. Cole, Thomas F. Meeham and J. M. Meeham, New York City.

S. 966. For relief of John Ryan, New York City.

S. 335. For relief of Roundsman Joseph Devlin, New York City.

S. 865. For relief of Alvin Boody, New York City.

S. 760. For opening new street in Sixth ward, New York City.

S. 1020. As to salaries of attendants, Court of General Sessions, New York City.

S. 991. As to commissioners costs in erection of a public building, New York City.

S. 992. For additional public parks in New York City.

S. 990. As to commissioners costs for rapid transit railways, New York City.

S. 1111. For three additional magistrates and a police clerk, New York City.

S. 1008. Amending Greater New York charter as to recreation piers.

S. 965. Amending Greater New York charter as to meeting of local boards of improvement.

S. 566. For relief of John F. Walsh, New York City.

S. 1080. For erection of court buildings, county jail, etc., New York City.

S. 509. Amending Greater New York charter as to fire department pensions.

S. 597. Relating to fire department employees, New York City.

S. 752. Exempting religious corporations from assessments, New York City.

S. 473. Amending charter of Lockport as to salary and lift bridge funds.

S. 1099. Amending charter of Hudson as to water system and commission of public works.

S. 216. Amending charter of Mount Vernon as to city officers.

S. 869. Amending charter of Mount Vernon as to official newspapers.

S. 1176. Amending charter of Oneida.

A. 1910. Amending Buffalo charter as to police force.

A. 1522. Amending Buffalo charter as to hostlers and van drivers.

A. 1938. Amending the charter of Corning.

A. 1931. Amending the charter of Elmira.

A. 1918. Amending the charter of Fulton.

A. 1828. Amending the charter of Geneva as to depositaries for city funds.

A. 1200. Relating to the county treasurer of Rensselaer county.

A. 1921. Amending the charter of Rochester.

A. 1297. Relating to the water works of Troy.

A. 2074. For disposition of lands in Troy.

"The following bills remaining in my hands and previously undisposed of are not approved because of defective drafting, questionable propriety, objectionable provisions, duplications of bills already signed or unconstitutionality."

Senate bill number 184, entitled "An act to amend the insurance law, relating to fire insurance companies."

Senate bill number 259 (Assembly reprint No. 2094), entitled "An act to amend section thirty-seven of the agricultural law, entitled 'An act in relation to agriculture, constituting articles one, two, three, four and five of chapter thirty-three of the gen-

eral laws,' as amended by chapter six hundred and fifty-six of the laws of nineteen hundred and one, relative to violations and penalties."

Senate bill number 272, entitled "An act to further amend chapter twenty-seven of the laws of eighteen hundred and seventy-five, entitled 'An act to designate the holidays to be observed in the acceptance and payment of bills of exchange, bank checks, and promissory notes,' as amended by chapter thirty of the laws of eighteen hundred and eighty-one, and chapter two hundred and eighty-nine of the laws of eighteen hundred and eighty-seven, and chapter six hundred and three of the laws of eighteen hundred and ninety-five, designating Columbus discovery day as a public holiday." *

Senate bill number 364, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Michael O'Keefe against the State of New York, for damages alleged to have been sustained while in the employ of the State."

Senate bill number 366, entitled "An act to amend section eighty-nine of chapter eighty-seven of the laws of eighteen hundred and ninety-three, entitled 'An act to amend chapter three hundred and thirty-five of the laws of eighteen hundred and sixty-eight, entitled "An act to incorporate the city of Ogdensburg,"' and the acts amending the same."

Senate bill number 401, entitled "An act relative to lands in the Borough of Brooklyn in the city of New York devised in and by the last will and testament of John H. Hoff, deceased, to Sarah Elizabeth Hoff, his widow, for and during her natural life."

Senate bill number 458, entitled "An act to amend the county law, relating to the salaries of the county judge and surrogate of Queens county."

Senate bill number 528 (Assembly reprint No. 1942), entitled "An act to amend an act, entitled 'An act to make the office of clerk of the county of Kings a salaried office and regulating the management of said office,' being chapter seven hundred and four of the laws of nineteen hundred and one, respecting the employees in said office."

* Columbus Day, October 12, was made a public holiday by L. 1909, chap. 112.

Senate bill number 561, entitled "An act to amend the revised statutes relative to the parole of prisoners from state prisons and the Eastern New York Reformatory."

Senate bill number 603, entitled "An act to amend the highway law, relative to the payment of money by the State for aid to towns in repairing highways."

Senate bill number 662, entitled "An act to regulate the price of electricity in cities having a population of over twelve thousand and not more than thirteen thousand inhabitants."

Senate bill number 718, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the city of Auburn against the state, for local improvement consisting of the laying, and paying for the construction of, a sidewalk in front of lands in said city upon which is located the state prison, and to render judgment therefor."

Senate bill number 734 (Assembly reprint No. 2116), entitled "An act to amend the partnership law."

Senate bill number 736, entitled "An act to reappropriate certain unexpended balances of former appropriations."

Senate bill number 747, entitled "An act to amend the code of civil procedure in relation to the certification of foreign wills and letters of administration."

Senate bill number 832, entitled "An act to regulate the police power with reference to the exhibition of pictures of suspected and convicted persons."

Senate bill number 843, entitled "An act relative to certain lands bequeathed by the last will and testament of John Cunningham, deceased, to Mary Cunningham, during her life or until she remarries."

Senate bill number 854, entitled "An act to amend chapter sixty-two of the laws of eighteen hundred and eighty-eight, entitled 'An act to amend chapter six hundred and forty-four of the laws of eighteen hundred and eighty-six, entitled "An act to enable any county, city or town in the state of New York to lease its public buildings or a part thereof, to posts of the Grand Army of the Republic."'"

Senate bill number 875, entitled "An act to incorporate the Troy and Colonie Bridge company, for the purpose of constructing and maintaining a bridge, appurtenances and approaches to

the same, over the Hudson river, from the foot of Hutton street in the city of Troy, to some point in the village of Greene Island, on the opposite side of said Hudson river."

Senate bill number 917, entitled "An act to amend the public buildings law, in relation to the control of repairs, additions and alterations of the public buildings of the state."

Senate bill number 937, entitled "An act to provide for a statue in memory of Alexander Hamilton at the Capitol at Albany, and making an appropriation therefor."

Senate bill number 958, entitled "An act to amend the banking law, relating to the number of directors of a trust company constituting a quorum."

Senate bill number 964, entitled "An act to authorize the New York and London Trust Company to purchase stocks, bonds and other securities, and to issue debentures and other obligations against the same."

Senate bill number 971, entitled "An act to amend chapter one hundred and eighty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of cities of the second class,' in relation to the police courts."

Senate bill number 1082, entitled "An act to provide for the erection of an armory in the city of Rochester, for the use of the national guard and naval militia there stationed, and making an appropriation therefor, providing for the purchase of a site for such armory and the taking of real estate therefor."

Senate bill number 1120, entitled "An act in relation to persons employed in the preservation of the public records in the surrogate's office of the county of New York."

Senate bill number 1122, entitled "An act to amend chapter three hundred and ninety-seven of the laws of nineteen hundred and two, entitled 'An act to incorporate an inebriates' home, and to provide for the care and treatment of habitual drunkards therein.'"

Senate bill number 1125, entitled "An act to amend chapter one hundred and seventy-three of the laws of nineteen hundred and one, entitled 'An act to amend the tax law, in relation to the taxable transfers of property.'"

Senate bill number 1132, entitled "An act to further amend section two hundred and thirty of the tax law in relation to the appointment of appraisers, stenographers, et cetera."

Senate bill number 1135, entitled "An act to amend the code of civil procedure by inserting therein an additional section relating to requests to find."

Senate bill number 1168, entitled "An act to amend chapter three hundred and sixty-nine of the laws of eighteen hundred and ninety-five, entitled 'An act creating a commissioner of jurors for each county of the state having a certain population, and regulating and prescribing his duties; also providing in what manner jury lists shall be made up and jurors drawn and notified in the courts of record in such counties, and how they may be exempt or excused, and the length of service of such jurors,' and the acts amendatory thereof in relation to the qualifications of jurors and the period for which they are exempt from jury duty."

Senate bill number 1203, entitled "An act to amend section thirteen hundred and seventeen of the code of civil procedure, in relation to appellate decisions."

Senate bill number 1204, entitled "An act to amend the forest, fish and game law relative to hunting with ferret in Cattaraugus county."

Senate bill number 1212, entitled "An act to amend chapter nine hundred and forty-six of the laws of eighteen hundred and ninety-five, entitled 'An act to amend the code of civil procedure,' in relation to stenographers."

Senate bill number 1217, entitled "An act to amend the code of civil procedure, in relation to the jurisdiction of the surrogate's court."

Assembly bill number 52, entitled "An act for the relief of persons, firms and corporations who rendered services and furnished labor or material which was used in constructing the state armory in the village of Tonawanda, Erie county, New York."

Assembly bill number 241 (Senate reprint No. 833), entitled "An act to amend chapter six hundred and eighty-six of the laws of eighteen hundred and ninety-four, entitled 'An act for the preservation of macadamized and other public highways in the counties of Queens and Nassau,' by exempting certain roads from certain of the provisions thereof."

Assembly bill number 255, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the

alleged claim of S. F. Hess and company, against the state for damages alleged to have been sustained by the said S. F. Hess and company, and to render judgment therefor."

Assembly bill number 271, entitled "An act making an appropriation for the erection and completion of the dining-room wing of the Dannemora hospital for insane convicts."

Assembly bill number 310, entitled "An act to amend the agricultural law, relating to payment of license fees for the sale of concentrated commercial feeding stuffs."

Assembly bill number 583, entitled "An act to release to Konrad Lang second, Katharina Kaiser, and Elizabeth Koch, the right, title and interest of the people of the state of New York acquired by escheat, in and to certain real estate situate in the city of Rochester."

Assembly bill number 629, entitled "An act to amend chapter seven hundred and twenty of the laws of eighteen hundred and sixty-eight, entitled 'An act to amend an act entitled "An act to amend an act entitled 'An act in relation to the fees of the clerk of the county of Kings,'"' in relation to fees in the county clerk's office."

Assembly bill number 643, entitled "An act to amend section one hundred and thirty-nine of chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals.'"

Assembly bill number 663, entitled "An act conferring jurisdiction upon the court of claims to hear, audit and determine the alleged claims of citizens of the towns of Horseheads and Elmira and the city of Elmira for damages alleged to have been suffered by them occasioned by operations carried out pursuant to chapter nine hundred and forty-nine of the laws of eighteen hundred and ninety-six, chapter seven hundred and ninety-one of the laws of eighteen hundred and ninety-seven, and chapter six hundred and seven of the laws of eighteen hundred and ninety-eight."

Assembly bill number 709, entitled "An act to authorize the comptroller of the state to hear and determine an application of William L. Ostrander for cancellation of tax sales of lands situated in the town of Hope, county of Hamilton, for unpaid taxes."

Assembly bill number 710, entitled "An act to authorize the comptroller of the state to hear and determine an application of Everett R. Walker for cancellation of tax sales of lands situate in the town of Bleeker, county of Fulton, for unpaid taxes."

Assembly bill number 762, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the Commercial Construction company for extra work and materials alleged to have been performed and supplied by them at the Manhattan State Hospital, Wards Island, during the years eighteen hundred and ninety-seven and eighteen hundred and ninety-eight."

Assembly bill number 1030 (Senate reprint No. 1034), entitled "An act to amend chapter one hundred and eighty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of cities of the second class,' as amended by chapter five hundred and eighty-one of the laws of eighteen hundred and ninety-nine, relative to the designation of official newspapers."

Assembly bill number 1052, entitled "An act to amend section thirty-three hundred and twenty of the code of civil procedure, relative to receiver's commissions, cost of bonds, trustee's commissions."

Assembly bill number 1076 (Senate reprint No. 1054), entitled "An act concerning the collection and disbursement of highway moneys in the town of Colonie in the county of Albany."

Assembly bill number 1085, entitled "An act conferring jurisdiction upon the court of claims to hear and determine the alleged claim of certain owners of real property in New York city for damages alleged to have been caused by the construction, maintenance and operation of the railroad viaduct on Park avenue, in the city of New York, built pursuant to chapter three hundred and thirty-nine of the laws of eighteen hundred and ninety-two and the acts amendatory thereof."

Assembly bill number 1100, entitled "An act to amend the forest, fish and game law to prohibit hunting and fishing on Sunday in Sullivan county."

Assembly bill number 1106, entitled "An act to amend title three of chapter eight hundred and eighteen of the laws of

eighteen hundred and sixty-eight, entitled 'An act to incorporate the village of Port Chester,' so as to create the office of harbor master."

Assembly bill number 1166, entitled "An act to amend the tax law, in relation to the time of making assessment in certain towns."

Assembly bill number 1179, entitled "An act to amend the Indian law, in relation to actions against Indians on their contracts."

Assembly bill number 1197 (Senate reprint No. 1154), entitled "An act to amend the liquor tax law, relative to the payment of rebates."

Assembly bill number 1215, entitled "An act to amend the stock corporation law, relative to consents of stockholders to mortgages of corporate property."

Assembly bill number 1229, entitled "An act to authorize the comptroller of the state to hear and determine an application of Michael Moriarity for cancellation of tax sale of lands situated in the town of Johnsburgh, county of Warren, for unpaid taxes."

Assembly bill number 1304, entitled "An act to amend the insurance law in reference to the taxation of foreign life insurance companies."

Assembly bill number 1304, entitled "An act to amend the forest, fish and game law, relative to the transportation of fish."

Assembly bill number 1306, entitled "An act in relation to existing grade crossings over the New York and Harlem railroad at Mount Vernon avenue and Oak street, in the city of Mount Vernon, and to provide for the payment of the cost of the change or alteration thereof and of the work to be done."

Assembly bill number 1385, entitled "An act to amend the town law, in relation to commissioners of highways in towns less than three square miles of area."

Assembly bill number 1388 (Senate reprint No. 1093), entitled "An act to amend the stock corporation law, relative to the reduction of capital stock."

Assembly bill number 1389 (Senate reprint No. 1198), entitled "An act to amend the code of civil procedure, relative to the possession of property on giving security."

Assembly bill number 1474, entitled "An act to amend the village law, in relation to the territory and population requisite for incorporation."

Assembly bill number 1478, entitled "An act to amend the railroad law, in relation to grade crossings of steam railroads."

Assembly bill number 1550 (Senate reprint No. 1035), entitled "An act to amend the insanity law, relating to the purposes of the Matteawan state hospital, the transfer of insane convicts and inmates of state hospitals thereto, and the maintenance of patients therein."

Assembly bill number 1569 (Senate reprint No. 1208), entitled "An act to confer jurisdiction upon the court of claims to hear and determine the alleged claim of Emil August Neresheimer and Christine Nesle Coeuret, executors of the estate of Paul Gibier, deceased, for services rendered at the Pasteur Institute of the city of New York."

Assembly bill number 1579, entitled "An act to amend the membership corporations law, relating to family cemetery corporations."

Assembly bill number 1583, entitled "An act to amend the membership corporations law, relating to the sale of unoccupied lots in cemeteries and the disposition of the proceeds thereof."

Assembly bill number 1604, entitled "An act to amend the county law, relating to the appointment of a special district attorney in case of vacancy or inability to serve."

Assembly bill number 1614, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Robert Payne against the State for damages alleged to have been sustained by him and render judgment therefor."

Assembly bill number 1707, entitled "An act to amend chapter three hundred and twenty-three of the laws of eighteen hundred and seventy-two, entitled 'An act authorizing the election of a receiver of taxes and assessments for the town and village of Saratoga Springs,' relative to the surety of the receiver of taxes."

Assembly bill number 1708, entitled "An act to amend chapter seven hundred and sixty-nine of the laws of eighteen hundred and ninety-six, entitled 'An act to provide for supplying the

village of White Plains with water and authorizing the issue of bonds therefor, and to create a board of water commissioners for said village,' with regard to a fire protection tax."

Assembly bill number 1736, entitled "An act to amend section two hundred and fifty-nine of the tax law relative to supplementary proceedings to collect taxes."

Assembly bill number 1741, entitled "An act authorizing the comptroller to hear and determine the application of Charles Doherty for the cancellation of the sale of certain lands in the town of Minerva, county of Essex, for unpaid taxes."

Assembly bill number 1753, entitled "An act to amend the civil service law, in relation to veterans."

Assembly bill number 1771, entitled "An act to amend the real property law relating to the sale of real property devised or conveyed to a person for life with contingent remainder or remainders over to persons, the identity of whom cannot be definitely ascertained until the death of the person entitled to the life estate."

Assembly bill number 1792, entitled "An act conferring jurisdiction upon the adjutant-general to hear, audit and determine the claim of John H. Shaffer, private, Thirty-seventh separate company, national guard of New York, for compensation by reason of disability arising from blindness incurred in the service of the state."

Assembly bill number 1793, entitled "An act to amend section four hundred and one of the penal code, relative to certain offenses connected with the dispensing and sale of drugs and medicines."

Assembly bill number 1796, entitled "An act to amend the state charities law, relative to appointments by boards of managers."

Assembly bill number 1803, entitled "An act to amend chapter seven hundred and six of the laws of nineteen hundred and one, entitled 'An act to make the office of register of the county of Kings a salaried office and regulating the management of said office,' respecting the employees."

Assembly bill number 1804, entitled "An act to amend the agricultural law, relative to appraisers of condemned animals."

Assembly bill number 1805, entitled "An act to amend chapter ninety of the laws of nineteen hundred and one, entitled 'An act empowering the Northside water commissioners of the town of Waterford to contract with water companies for sprinkling Saratoga avenue in said district and providing for the payment therefor,' relative to real property and street railways."

Assembly bill number 1837, entitled "An act to authorize the vestry of Saint Peter's Church of Cortlandt, Westchester county, to regulate the interment of bodies in the cemetery of such church."

Assembly bill number 1847, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of Abram Bulson and Cornelius A. Polock, for services rendered as bridge tenders at the Nineteenth street bridge over the Erie canal in the late town of Watervliet, in the county of Albany."

Assembly bill number 1849, entitled "An act to amend the benevolent orders law, relative to joint corporations and their powers."

Assembly bill number 1881, entitled "An act to confer jurisdiction on the court of claims to hear, audit and determine the alleged claim of William H. Baker against the state for loss and damages alleged to have been sustained by him, arising out of the condemnation, quarantine and slaughtering of animals belonging to him, by authority of the state board of health and of the agricultural department."

Assembly bill number 1911, entitled "An act to amend chapter four hundred and eighteen of the laws of eighteen hundred and ninety-seven, entitled 'An act in relation to liens, constituting chapter forty-nine of the general laws,' in relation to liens of hotel, boarding and lodging housekeepers."

Assembly bill number 1916, entitled "An act to amend chapter one hundred and sixty of the laws of nineteen hundred, entitled 'An act to incorporate the city of Cortland,' relative to contracts, the power of the common council and sidewalks."

Assembly bill number 1917, entitled "An act to amend chapter one hundred and eighty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act for the government of cities of the second class,' in relation to the jurisdiction of the police justice."

Assembly bill number 1906, entitled "An act amending section seventeen hundred and seventy-two of the code of civil procedure, to provide for the enforcement in this state of a judgment for divorce or separation rendered in another state requiring a husband to provide for the education and maintenance of his children and the support of his wife."

Assembly bill number 1905, entitled "An act to amend chapter seven hundred and six of the laws of nineteen hundred and one, entitled 'An act to make the office of register of the county of Kings a salaried office and regulating the management of said office,' in relation to the salary of said register."

Assembly bill number 1965, entitled "An act to amend chapter seven hundred and four of the laws of nineteen hundred and one, entitled 'An act to make the office of clerk of the county of Kings a salaried office and regulating the management of said office,' in relation to the salary of said clerk."

Assembly bill number 1998, entitled "An act incorporating the Personal Property Loan Company."

Assembly bill number 2062, entitled "An act to amend the highway law, in relation to the appointment of overseers of highways."

Assembly bill number 2064, entitled "An act to amend the highway law, in relation to the removal of snow."

Assembly bill number 2069, entitled "An act to amend chapter one hundred and fifty-two of the laws of eighteen hundred and ninety-nine, entitled 'An act in relation to the use of bicycles on sidepaths, for licensing bicycles, for the appointment of sidepath commissioners and to provide for the construction, maintenance, regulation, preservation and shading of sidepaths,' by adding certain sections thereto."

Assembly bill number 2072, entitled "An act to amend the labor law, in relation to elevators, elevator cabs or cars and elevator wells in factories and mercantile establishments."

Assembly bill number 2075, entitled "An act to authorize the board of estimate and apportionment of the city of New York to audit and allow William F. Grell, late sheriff of the county of New York, such legal expenses as he may hereafter be put to, not exceeding five thousand dollars per annum, for three years after the expiration of his term of office."

Assembly bill number 2082, entitled "An act in relation to assessments for local improvements on property exempt from taxation."

Assembly bill number 2106, entitled "An act to amend the tax law, in relation to sales for unpaid taxes in the county of Clinton."

1904. JANUARY 6. LEGISLATURE, ONE HUNDRED AND TWENTY-SEVENTH SESSION.

BENJAMIN B. ODELL, Jr., Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, N. Y., *January* 6, 1904.

TO THE LEGISLATURE.—I herewith submit my fourth annual message. The condition of the State's finances is most gratifying. Our receipts are nearly equal to payments, and with the large surplus on hand, it needs only prudence and wisdom upon the part of the Legislature to make unnecessary a direct tax for the ensuing year. The bonded debt of the State is $9,665,660. If from this we deduct the sum of $3,074,566.09, now in the sinking fund and available for the extinguishment of this debt, the net bonded obligation is but $6,591,093.91. It will be necessary at the present session to provide for the payment of $55,000 Adirondack and $200,000 of Public Defense Bonds which will become due during the next fiscal year.

The total receipts into the State Treasury from indirect revenues were $22,341,802.97 and from all other sources $1,967,695.73, a total of $24,309,498.70. The total payments were $24,346,723.27, showing a deficiency in receipts of but $37,224.57. The actual cash balance on October 1,

1903, was $10,192,629.34. If from this we deduct all appropriations in force on September 30, 1903, the free balance for the current fiscal year, which may be classed as surplus, was on October 1, 1903, $8,562,277.85, a sum sufficient to guard against unforeseen contingencies or lessened receipts from sources which are liable to fluctuations.

CANAL IMPROVEMENTS.

The adoption of the referendum for the enlargement of the canal system of the State brings to us responsibilities which call for sound judgment and conservative treatment. The policy of the State having been determined, neither factious nor personal opposition should hinder its fulfillment. Unnecessary delay is as undesirable as undue haste. A business-like treatment of every detail is demanded. Verification of the engineer's estimates of the most important and difficult portions of the work by actual bids should be obtained at once. I am advised that the surveys already made will permit an early submission to bidders of plans and specifications for some of the most costly sections. The Expert Board provided for in the act will be soon appointed by me. I hope to take such action at this initial period of the work as will take the whole project out of political surroundings. Merit should and will be the sole test in the selection of its individual members. That the Board may be unhampered in its work it is desirable that the terms of office of its members should be coincident with the period of construction, and that removals should be for cause only upon charges duly sustained.[1] Thus safeguarded and working under the restrictions imposed by the statute and in harmony with the State's officials, this Board can be relied upon to properly protect the State's

[1] By chapter 200, passed April 4, the consulting engineers appointed under the barge canal act of 1903, chapter 147, were to continue in office during the construction of the work authorized by that act, and vacancies in office were to be filled by the Governor and Senate for the same term.

interests. The change in route, the abandonment of the present canal in part, the purchase of other property, should receive careful attention. To this end we should not alone purchase the land necessary for the canal itself but we should also secure such releases as will minimize the claims which may arise as the result of its operation. A board of Appraisers of say three members should be authorized to effect settlements with owners and thus bring down to actual figures and certainty that which at present is at the best but mere conjecture.[2] Every detail having been provided for, and the accuracy of the estimated cost of the work determined, there will then come the positive knowledge that either the canal can be completed within the sum authorized, or that a necessity exists for a greater expenditure. All of these precautions will not delay, but will rather hasten the building of the canal and will also serve to allay the fears of all and inspire confidence in the administration of the work. If, as I am firmly convinced, no mistakes have been made, then the most important subject left for the consideration of the Legislature is that of providing ways and means for the raising of the money to be expended. While the referendum provides for a yearly direct tax and the payment of the debt in eighteen years, I am sure that the general expectation is that some other method may be devised. To return either to a direct tax or to seriously disturb existing laws is far from desirable. New York, with its vast interests and wealth, has resources which would seem to make it almost a profligate use of funds to burden the people with unnecessary in-

2 Chapter 335, passed April 14, was intended to provide for the appraisal of lands, structures and waters for the use of the improved canals under the barge canal act of 1903, chapter 147. The act authorized the appointment of three special examiners and appraisers of property taken for canal purposes. They were to be appointed by the Governor and Senate, and hold office four years, and the Governor was authorized to fix their compensation at a sum not exceeding $5,000 per annum, with an allowance of $2,500 for expenses.

terest charges. The present law proposes to pay in eighteen years for interest $54,540,000. If the period be extended to fifty years the expenditure for the same purpose would be $151,500,000. The principal sum in both cases is in addition to be provided for. What is it we seek to escape and what benefits do we derive from this absolute waste of public moneys? New York has a valuation of nearly six billions of dollars. One hundred and one million of dollars is probably one of the greatest sums ever appropriated for a single public work, and yet if in the wisdom of the Legislature it should be all levied and collected in a single year, the tax would be but $17.12 per thousand of valuation. While this sum is large for State purposes, yet there are but few municipalities in our commonwealth that can boast of so favorable a local tax rate. If the expenditure were spread over ten years, the probable period of construction, the yearly tax would be but $1.71 per thousand. Therefore in order to escape, or rather to put off for eighteen years the extinguishment of the debt, the intention is to burden ourselves with interest charges equal to fifty-four per cent. of the principal. True, with mathematical accuracy the whole proposition is worked out in annual payments, yet the result will be practically as I have outlined. If we could pay this debt in twenty annual installments without interest, our obligation would call for $5,550,000 annually, or but $2,470,000 in addition to the proposed yearly interest charges. This could be done if the State's revenues from indirect sources were large enough, but unfortunately our present revenues are not sufficient for this purpose. If, as I have indicated in prior messages, however, advantage is taken of opportunities to correct some manifest inequalities in our tax laws, the increased receipts which would result would then in twenty years provide for the total expenditure. But how can this be accomplished, it may be asked? If the State had additional revenues of $5,500,000 annually it

could furnish probably all the money that might be required for the first five years without recourse to the sale of bonds or levies upon the localities. During the last five years of the work, there will be of course a necessity for such a sum as may remain unpaid, or an aggregate of about $75,000,000. The payment of interest if the bonds were issued under the referendum plan would take nearly two-thirds of this new revenue if it were to be paid annually, and therefore no saving would result. It is, therefore, necessary that the interest should be deferred, that is, the bonds to be issued should be of such a character that the principal and interest might be paid at maturity. Such bonds, however, might not prove attractive to investors and it would be necessary therefore to have recourse to the counties in order to perfect and make successful the plan I have in mind for the best method of financing this public improvement. The deferment of payment of interest should not alone be our object. No large sum of money should be on hand until the necessity for its use arises. Assuming, therefore, that the localities will be called upon to bear this burden, the proper financing of this loan would be by the issuance of bonds upon which there would be the smallest possible interest charges. Assuming that new revenues will be provided and that the period of construction will be ten years, $25,000,000 could be paid by the State by the end of five years without levies upon the counties. If levies were then made for the remaining five years of ten millions of dollars annually upon the counties in proportion to their assessed valuation, this with the continuance of the State's contribution of five millions of dollars annually would provide the whole sum that is necessary for the completion of the work. Bonds could be then issued which would represent the aggregate of principal and interest and could be given to the localities in return for their levies, provision being made for their

retirement after the State's primary payments for ten consecutive years had been completed. The period for which these bonds can be issued is but eighteen years because of the constitutional limitation.[a] There is no reason why they cannot be paid off sooner however, and a great saving in interest charges would be thus effected and there would then be no necessity for creating a sinking fund if the bonds were retired annually as the State had the ability to do it. The bonds could be issued in annual series of $5,000,000 each, five years after the commencement of work and completed in twelve years, which would make the life of the last series of bonds seventeen years. The first series would be paid in six years from the first contribution from the counties, the second in seven years, and so on to the final payment. The bonds which I propose should be issued would be first, for the first levy of $10,000,000 upon which there should be computed six years' interest at three per cent. upon $5,000,000, and seven years' interest upon $5,000,000. The second levy of $10,000,000 would be covered also by two series of bonds of $5,000,000 each upon which seven and eight years' interest would be computed respectively. This form of bond issue would be continued until the final levy, and $5,500,000 had been provided for in twelve annual installments. The total amount of principal and interest which would be thus required would be $62,750,000, which would require a yearly annual payment for twelve years of $5,230,000. These bonds then could be placed with the counties in proportion to their contributions or levies at their then present worth. This I am led to believe would not be inharmonious with existing law which provides that they shall not be sold for less than par, as the face value of the bond would be par and accumulated interest for the period which it was to run.

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[a] Const. 1894, art. 7, § 4.

The delivery of these bonds to the counties would be a guarantee that finally the State would reimburse every locality for such levy as might be made annually for the necessary funds with which to build the canal. They could be used by the counties as a sinking fund for the retirement of their own bonds which might be issued if it is so desired. The latter bonds being county bonds, would not interefere with the borrowing capacity of any municipality. Under this method the only burden which would be placed upon the counties would be the interest charge upon their own bonds, which would be recouped to them finally, so that their own bonds could be retired and there would be a constant decrease in the amount necessary for interest charges after the maturity of the first series of bonds Therefore the counties would suffer no loss. The necessity for a direct tax would not exist and the whole cost would be borne by the State from its indirect revenues. To accomplish this, a constitutional amendment which would permit the payment of bonded indebtedness from indirect revenues would be required.[3] It might be necessary to provide also for a constitutional amendment which would permit the loaning of monies to the State by the counties although I am convinced that if the contributions of the localities are treated as tax levies, such a necessity would not arise. But it would be better perhaps to provide for this by amendment to the Constitution. Other constitutional objections might be raised, but ample time can be taken without in any way interfering with the progress of the work, and such amendments as are considered necessary could be presented to this Legislature and be readopted by the next Legislature, and then submitted to the electorate of the State in 1905. Assuming that the

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[3] See Constitution of 1894, article 7, section 11, added in 1905.

total expenditure will be $101,000,000, the whole cost will be as follows:

State's proportion in ten years	$50,500,000 00
Counties' proportion to be repaid	50,500,000 00
Interest to be repaid to the counties	12,750,000 00
Total	$113,750,000 00

Under the present law the payment, principal and interest, would be $155,540,000, or $41,790,000 more than by the plan suggested. All that is necessary to accomplish this are new revenues to the amount of $5,500,000 annually, thus saving to the people of the State this great sum of money. To provide for the present, ten millions of dollars of bonds could be issued for two or three years to meet immediate needs and then be retired.

As $101,000,000 are authorized and but $62,750,000 for this purpose are required, this temporary use of $10,000,000 of bonds would not affect the plan I have outlined. In order that the practicable working out of these results may be shown, I have applied them to the Greater City of New York, Erie, Dutchess and Seneca counties, on the 1903 valuation, showing first their contributions and the value of bonds with accumulated interest received:

	Payment	Bonds.
New York	$33,397,275 00	$41,719,337 50
Erie	2,624,485 00	3,261,117 50
Dutchess	378,245 00	469,997 50
Seneca	123,222 00	153,110 00

While under the present law the contributions would be as follows, for principal and interest:

New York City	$103,410,769 00
Erie	8,083,413 80
Dutchess	1,164,994 60
Seneca	379,517 00

In this latter computation the working of the sinking fund is disregarded, because the loss upon yearly payments would counterbalance the benefits which would accrue. To accomplish this saving is it not better to disregard conditions which, while apparently securing local benefits, are in reality more than overbalanced by payments which will be necessary under a direct tax system for the purpose of rebuilding the canals. There may be a suggestion that indirect taxation will in effect be a tax upon the localities, but the revenues should be derived mainly from sources which do not at present form any considerable part of the local revenues.

PUBLIC EDUCATION.

In the administration of our school system two authorities are in control. The one, the Board of Regents, has for its particular function the charge of higher education, while the so-called primary or common school education was placed by statute under the Superintendent of Public Instruction. From time to time friction has arisen, with results which have been in no way beneficial to the cause of education. Dual inspection and greater expense have resulted with no compensating benefits. A well defined line between the two departments would in a large measure remove these unhappy conditions. Both are necessary. Neither should trespass upon the rights of the other. In our magnificent school system each has its proper place and consequently no effort at the displacement of either should receive serious consideration. Primary education should be understood to include all schools where academic education is not a part of the curriculum. Academic education, on the other hand, should be under prescribed courses with not less than a three years term. With this line of demarcation the duties of the Superintendent of Public Instruction and the Regents could be determined and fixed by statute. Who has the most or the least is

not worthy of consideration, but rather that both should perform their work equally for the advancement of education. Mere disbursements of public moneys do not mean efficiency. What is more necessary are plans formulated by competent educators. If, therefore, all so-called academic departments were placed under the charge of the Regents, and every grade of school up to the academic under the Superintendent of Public Instruction, better results would be produced.

A joint committee appointed at the last session of the Legislature has this subject under consideration, and it is to be hoped that from their report and these suggestions, needed legislation may result. In order to accomplish and carry out such changes as I have suggested, Chapter 556 of the Laws of 1894 should be so amended as to provide for a three-year academic course in order to secure State aid as an academic department. Second: The Superintendent of Public Instruction should be relieved of his power over academic schools, as to the approval of the course pursued, by amendment to chapter 1031 of the Laws of 1895.

I make these suggestions with no discourtesy to the committee investigating these departments, but with the hope that there may come much needed legislation, which will result in the elimination of unnecessary strife and a consequent advancement in our public schools and higher education.[4]

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[4] The joint legislative committee on the unification of educational interests, appointed in 1903, presented its report to the Senate on the 3d of February. See Senate Document No. 25. This report was signed by a majority of the committee. A minority report was also presented on the 4th of February. Documents 25 and 27.

The majority of the committee presented a bill intended to reorganize the two educational departments. The bill with modifications became chapter 40 on the 8th of March. The University was continued, but the number of Regents was reduced to eleven, and were to be chosen by judicial districts. The office of ex-officio regent was abolished. Regents were to be elected by the Legislature, and the full term was fixed at eleven years. The act required

CORNELL SCHOOL OF FORESTRY.

By chapter 122 of the Laws of 1898 the State purchased townships 23 and 26 in the county of Franklin, and Cornell University thereupon took title and undertook practical demonstration and instruction in the School of Forestry. Its operations had for their object the substitution for so-called worthless timber valuable growths, but this has resulted in the practical destruction of all trees upon the lands where the experiment was in progress. No compensating benefits seem possible to the present generation. The preservation of the forests is primarily for the protection of the water supply, and this is not possible through the denudation of the lands. Therefore this school failed of its object, as understood by its founders, a failure which was not due however to the work of the University, which followed out the letter and spirit of the law. The report of the committee of the Assembly at the last session of the Legislature, and the knowledge of the disapproval of many of our citizens, led me to veto the item for its support in the appropriation bill of 1903.* The question therefore is before you, and to the Legislature we must accordingly look for such action as will properly protect all interests. Cornell University undertook this work at the request of the State, and as such was its agent. In so doing it has made contracts for which it is primarily

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the Legislature to elect a commissioner of education, who was to hold office six years subject to removal by the Regents, and after the expiration of the first term, the commissioner was to be chosen by the Regents. The offices of superintendent of public instruction and secretary of the board of Regents were abolished, and the powers and duties of those officers were transferred to, and were to be exercised by the commissioner of education. The act prescribed the general powers and duties of the commissioner, including the power to create departments and appoint deputies and heads of departments, subject to the approval of the Regents. The statute contained regulations concerning details of administration, and vested in the Board of Regents power to make rules and regulations for carrying into effect the provisions of the new act and existing laws relating to educational affairs.

* *Ante*, p. 555.

responsible, but which responsibility as the agent of the commonwealth it should not be called upon to assume. Neither should the school it founded be discontinued, because with the lapse of years a proper understanding of scientific forestry will become more and more a necessity. This is particularly true of farm forestry, which will form an important part in the future of agriculture within the State. That our people do not desire, however, that public lands shall be denuded is beyond question. It would seem therefore desirable that immediate legislation be had to recover to the State this property, of which there is about 30,000 acres, and for the payment into the Treasury of the unexpended portion of the capital fund advanced by the State. Permission should be given to clear up and remove all cut timber and wood by the university, so that the danger of fire may be lessened. The contracts made between Cornell and the Brooklyn Cooperage Company might be left with the Executive for adjustment, and failing in this either to the Court of Claims, if the State is to be party defendant, or to the Supreme Court if Cornell should be the responsible defendant. In neither case, however, should any burden be placed upon the university.

FOREST PRESERVE.

The purchase of land in the Adirondacks and Catskills by the State was discontinued two years ago, because of the belief that some comprehensive plan should be formulated for the continued acquirement of property and for avoiding the constant increased price of land which followed each appropriation. A committee appointed in accordance with the recommendation made in my last annual message has investigated this subject and will doubtless report some method of arriving at the desired results. It would seem to me that in every private camp, since it is the object of the State to protect the water supply, at least the timber rights should be secured either through

purchase or condemnation, and that all other lands should be acquired in full. There are in private preserves 705,914 acres, and in other holdings 1,356,816 acres. Much of this land has been lumbered over. Much has been burned and destroyed. In both cases replanting and protection should begin at once. The numerous forest fires, causing great destruction, call for greater vigilance upon the part of the State. Restrictive laws and additional means for properly patrolling those points where danger exists should be provided. The many disputes, with consequent litigation as to ownership, it seems to me call for a comprehensive plan to prevent the acquirement of lands by people who rely upon vague titles for possession. It is of the greatest importance that the State should eventually own every acre of land within the Preserve. Some action therefore should be immediately taken to acquire quasi possession at least and thus prevent speculation in that which it is the policy of the State to own. The recent fires have left dangerous debris which should be removed. To sell it is beyond the power of the State, but to clear up burned over tracts is necessary for replanting. If a Constitutional amendment is required to accomplish this end, it should be undertaken at once.[5]

FOREST PRESERVE ASSESSMENTS.

For the purpose of aiding the townships of which the Forest Preserve forms a part, the State has generously consented to an assessment of its land for all tax purposes. This is an exception to the general rule in regard to State property, except such as is permitted to be assessed for

[5] Chapter 233, passed April 5, added to the forest, fish and game law a section, 217a, containing a detailed description of the Catskill park.

Chapter 304 passed April 13, amended the description of the Adirondack park as contained in section 217 of the forest, fish and game law.

Chapter 590, passed May 3, amended the provisions of the forest, fish and game law, relative to the prevention of forest fires, including the addition of a section, 224b, providing for a fire patrol.

local purposes by special acts of the Legislature. There seems to be, however, no statute which adequately protects the State's interests in this respect. I would suggest an amendment to the law to govern this particular class of State property which would provide in effect that the assessment upon such property should be made conjointly with the State Board of Tax Commissioners. The State owns in many instances from sixty-five to eighty per cent. of the townships, and it is proper that before large increases in valuation which have followed recent assessments are confirmed, some method should be devised by the Legislature to protect the State's interests and avoid large bonded debts which are to be liquidated almost entirely by the State. It would seem no more than proper that the State's consent, through the Comptroller, should be first obtained before a bonded debt could be authorized. It is a peculiar situation which exists and it requires different treatment than in almost any other locality in the State.

CHARITABLE INSTITUTIONS.

The more modern methods of treatment of insanity, the consequent increase in requirements have brought us to an anomalous condition. Notwithstanding the additional space in hospitals, we apparently have not added to the dormitory capacity of our institutions. This to the uninformed seems like overcrowding and unwise economies. During the past three years appropriations amounting to $3,170,000 have been made to meet these growing demands. In 1898 the capacity was rated at 20,656 and in 1901 it was reduced to 18,678. Thus it would appear that the State's ability to properly care for its insane population was lessened notwithstanding that large sums had been expended to increase the dormitory facilities. During the past three years provision has been made for 5,147 new beds, so that if the old measurement of capacity of 1898 were in force we should have, when all changes are made facilities for a population

of 25,403. The present population is 24,187, with a rating in capacity of 23,825. From this statement it will be readily seen that under modern methods more cubic space per capita is allowed, with resultant advantage. In every direction that which is for the benefit of the patient has been furnished. The total cost of maintenance for the year was $4,104,689.23. Better discipline prevails among the employees and the increased pay for the nurses has produced results which more than justify the additional expenditures involved. Up to the present therefore there seems to be no just cause for complaint. New York, like every other seaboard commonwealth, is experiencing the baneful results which come to it because of the ease with which degenerates and incompetents from other lands can be sent here. We are obliged to rely for protection upon the inspections which the Federal Government makes. It would seem to be the part of wisdom to protect ourselves, and to that end I should favor legislation for State inspection by a board of competent physicians. Notwithstanding that we have now almost provided for our present population, with the expiration of the lease at Flatbush, with our average annual increase by October, 1905, we shall again have a deficiency of nearly 3,500 beds. Immediate steps are necessary to provide for this increase. The separation of the chronic from the acute insane seems in every way to be dictated by wisdom and experience. Pavilions for the acute insane at New York, Brooklyn and other State hospitals, together with the necessary appropriation for the new building in northern New York, will call for an expenditure of $2,175,000. This sum probably will be all that will be required for the next three years. It may be well to state here that if the policy of providing emergency hospitals be adopted that the per capita cost will be nearly $1,000, so that if legislation for this purpose is had a change in existing law will be required, as the per capita authorized is

now but $450. While the latter sum is all that is necessary for chronic wards, the former, which will require costly apparatus and appliances, is not too great if the results promised are secured.

There is urgent necessity for an increase in the capacity of the Custodial Asylum for Feeble-Minded at Rome, to care for the rapidly increasing population of this class of State wards. Provision should be made at the present session of the Legislature for additional buildings in order that the transfer from county to State care of idiots and degenerates may be speedily made.[6]

HOME FOR JUVENILE DELINQUENTS, RANDALL'S ISLAND.

The complaints made as to the management of the Home for Juvenile Delinquents have brought about two investigations, one by the management and one by the State Board of Charities. Both investigations have shown mismanagement, and both demonstrate the need of immediate action. Peculiar in its character, with but limited power exercised by the State, it seems to me that the time has arrived for a change and for the assumption of this work by the State. While it is true that the Fiscal Superintendent has power over expenditures so far as the approval of estimates is concerned, the management of this asylum is entirely under the control of a private corporation. With a board made up of busy men, it is largely in the power of its superintendent to dictate its policies. Although its support comes

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[6] Chapter 326, passed April 13, amended the insanity law by adding a section 18, providing for a board of alienists for examination of insane, idiotic, imbecile, and epileptic immigrants coming into the country at the port of New York. The board was to consist of a chief examiner and two assistants appointed by the commission in lunacy. The section prescribed the general powers and duties of the board, which was to be subject to the general supervision of the lunacy commission.

Chapter 727, passed May 11, appropriated $38,000 for a ward building to accommodate 100 men at the Rome State Custodial Asylum.

almost entirely from the State, its officers are without the pale of the civil service rules which govern every other State institution and its management is self perpetuating. Situated upon land which, in the event of removal or discontinuance of the asylum, must revert to the city, the State is annually called upon to contribute for betterments. Its close proximity to the greater city does not permit that healthy outdoor life which would be possible in a rural community; besides, the frequent visitations by many who should be kept away during the period which these youths are confined, is not always conducive to reformation. Experience at Rochester has demonstrated the wisdom of many of these conclusions, and to escape these evils the State has recently consummated the purchase of a large tract of ground for the removal of the Rochester Industrial School. Expense should not be a matter of serious consideration if results can be secured which make possible more complete reformation. The prevention of crime is more desirable than its punishment. Punishment may not be necessary if the playgrounds of the tenement population of our great cities are made attractive. Parks are as desirable as law, and sunshine brings out the best of man's nature. Therefore if the State should replace the asylum at Randall's Island with a similar State institution at some nearby point in an adjacent county, it would be of advantage both to its inmates and to those who could thereafter make use of the grounds now occupied by it for recreation. The separation of sexes in the reformatories is very desirable. Ample space is now available at Hudson and Bedford for this purpose if wisdom is exercised in separating old offenders from young incorrigibles. This subject is recommended to your earnest consideration, in the hope that proper legislation may follow. These conditions of which complaint is made, it is fair to say, are in no way chargeable to the benevolent people who are in control of

Randall's Island, but are due rather to antiquated methods which have resulted from the inexperience of the past.

AMENDMENTS TO THE ELECTION LAW.

The necessity for a still further amendment of the law controlling the primary and the general and local elections in the State has been demonstrated by recent experiences. Good government depends largely upon the freedom with which the franchise can be exercised in the nominating caucuses of parties. Interference by those who are not members of a party may predetermine nominations that are so objectionable that they do not meet with party support. In order therefore that the freest and fairest methods may prevail, it is necessary that that which is lacking in the present so-called Primary Law should be supplied at this session of the Legislature.

At the session of 1903 an amendment to the Primary Law was made which provided in effect that party declarations should be made only on the day of registration for general elections. This was intended to prevent transfers and so-called padding enrollment lists. During the past year the Supreme Court of the First Department decided there was no power vested in the court to remove from the enrollment lists non-residents or illegal voters.[b] While the right of challenge obtains, yet this method of reaching those who were not entitled to vote was not thought to be sufficient to properly guard the interests of those who were honestly entitled to participate in primaries. So far as the registry lists for all general, special and local elections are concerned, the right of review rests in the courts, and they may order stricken from the rolls the names of non-residents and others whose names remaining upon the list might prove a temptation for illegal voting. The same rule should apply to primary elections, and the deficiencies

[b] See People ex rel. Moscowitz v. Voorhis, 41 Misc. 360.

which exist in the present law should be supplied by amendment to the general law.[7]

In the larger cities it has been deemed wise in order to more clearly fix methods for the recognition of voters that certain questions should be put to the voter upon presenting himself to the Board of Registry, the object being to provide absolute identification as well as to establish his right to participate in the election at which he seeks to vote. Among these questions is one which seeks to ascertain the last place of voting. While the question is put "Where did you last vote?", there is lacking the general query which this question was undoubtedly intended to form a part of, "Where and when did you last vote?" A truthful answer to this question and an insistence upon correct answers to all other queries would determine whether or not the voter was a resident within the meaning of the law as a qualified elector and as such was entitled to exercise the right of franchise. I would suggest that the law be so amended as to include this additional query, thus protecting the ballot against the possibility of fraud in this direction.

I again direct your attention to the increasing number of defective ballots cast at elections throughout the State, and the virtual disenfranchisement of many voters which thereby results. In the hands of dishonest people technicalities often are taken advantage of to destroy ballots. Some action should be taken at the present session to properly guard and to specify the requirements for a fair counting of the votes cast at elections.

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[7] Chapter 350, amended section 3 of the primary election law, 1898, chapter 179, by adding a subdivision, 11, providing procedure for the removal of a name from the enrollment book for reasons specified in the subdivision.

Another act, chapter 488, passed April 28, amended the same section of the primary election law by adding a subdivision 12, providing procedure for the removal from an enrollment book of the name of a person who is alleged to be not in sympathy with the principles of the political party with which such person is enrolled. The new subdivisions applied only in the city of New York.

STATE PRISONS.

For humanitarian reasons ample provision should be made at once for remodeling the present State prisons. That source of disease, the foul, damp and unhealthy cell should be relegated to the past. The object of punishment should be not only a deterrent one, but should aim also to reform and to send the inmates of our prisons out into the world competent to take up useful work and to become useful members of society. So many inequalities and so much injustice results under our present statutes, that it would seem desirable that a commission, to be appointed either by the Legislature or the Executive, should take up this work and give to it careful consideration, with the end in view of making the Penal Code and prison administration more practical than they are to-day. As an instance of these inequalities, it may be stated that a young man over eighteen years of age convicted of a felony may be sent to a reformatory, but if convicted of a misdemeanor he must be sent to prison for a definite term. If the object is punishment alone then the law is right. If, however, it is also reformation, because probation or suspension of sentence is not always wise, then we are committing a wrong against society. The Parole Board and Children's Court, which followed a suggestion made by me, have produced beneficial results. It is quite important therefore that the beneficent influences which our charitable people are exerting in this direction should also receive encouragement from the Legislature.[8]

If the present law which provides for electrocution is to remain in force, and there seems to be no immediate possibility of its modification, then the State should erect a central prison for condemned prisoners.[9] This would permit

[8] Chapter 725, passed May 11, made various appropriations for repairs and improvements at the several State prisons, and the Eastern New York Reformatory, the Matteawan State Hospital for Insane Criminals, and the Dannemora Hospital for Insane Convicts.

[9] The foregoing act, chapter 725, made an appropriation of $50,000 for a prison for the detention and execution of condemned prisoners.

a certain amount of freedom which the State owes in the way of exercise and which it is impossible to give under existing conditions. It would be well for you to give this branch of prison administration careful consideration. The Prison Department is the only department which is administered under the old system in requiring specific appropriations for a portion of each year. In other words, this department is always six months behind in its expenditures, and relies upon the Supply Bill to meet the deficiencies which thus occur. I recommended last year that an additional appropriation should be allowed and that the item which is usually placed in the Supply Bill, be omitted. This bill passed the Assembly but failed of passage in the Senate, which fact was not discovered until after the adjournment of the Legislature. It left the Prison Department practically without funds for nearly six months. Whatever debt has been incurred should be paid and sufficient appropriation made to carry the Prison Department up to the beginning of the next fiscal year, and thereafter the appropriations for this department should be made the same as for all others in the Annual Appropriation Bill, in sufficient amount to carry it along a full year.

LABOR DEPARTMENT.

The Labor Department has been administered in a judicious manner. The authority and power vested in the Department have been exerted whenever possible towards effecting settlement of strikes and lockouts. I understand that numerous applications will be made to the present Legislature for amendments to existing statutes affecting labor. There is too often a misunderstanding of the relations which should exist between the employer and his employee and frequently laws are enacted which are burdensome and oppressive to one or both of these great interests. In the protection of both the commonwealth is equally interested. Care should be exercised therefore by your com-

mittees and by the Legislature in the enactment of new statutes. While it is is your duty to protect equally both labor and capital, neither should seek nor be afforded advantages which are detrimental to the interests of the other. The right of every man to sell his labor to the best advantage is self evident and axiomatic. The numerous disputes which have arisen have resulted in judicial interpretation of the statutes and the Constitution of the State from time to time, interpretations which have tended to define the relations which should exist between these interests. In the main these judicial findings have been beneficial and therefore it should not be the object of the Legislature to attempt to nullify them by amendments to the present laws. Some statutes, which have been passed with good intentions, are a positive hindrance to the enjoyment of those rights which are inherent under our form of government. The employers should be protected as well as the employees. While the Legislature should make ample provision for the protection of the workingman, it should not disregard the rights of the employer. The elimination of those conditions which produce strikes and lockouts is desirable but it is as much the duty of the State to protect individuals in the complete enjoyment of their rights as it is to protect aggregations of individuals combined for specific purposes. Stringent laws which will protect the employer against blackmailing designs are as important as the protection of the workingman in his rights. I believe the time has come when every sensible man recognizes the propriety of legislation which will accomplish these results.[10]

STATE EMPLOYEES.

A committee of the Legislature has had under investigation the compensation of employees in the State service and

[10] Chapter 659, passed May 9, amended the Penal Code by adding a section, 447f, making the bribery of a representative of a labor organization a misdemeanor.

the necessities for the services of those now in the State employ. While it is not my purpose to anticipate the report of this committee, or to interfere in any way with what is now a purely legislative function, I do desire to place myself on record as favoring such changes as are for the interest of the State in protecting it against such excessive salaries as have been the outgrowth more of favoritism than of necessity.

It is desirable therefore that such amendments as will make more effective the so-called Higgins Law should be enacted by the Legislature.

STATE PRINTING.

I desire to call your attention to a custom which prevails in some of the departments of issuing bulletins which are not provided for in the Appropriation Bill. The uncertainty as to the number of such publications and their cost makes the practice objectionable from every standpoint. While I do not desire to pass upon the necessity or the desirability of such publications, yet I do believe that we should insist upon these items being provided for in the annual Appropriation Bill to the end that we may know definitely and with certainty the cost of such printing.

Recent legislation has greatly reduced the State's printing expense, and I am informed that during the present year the amount will not exceed $250,000. Prior to recent legislation on this subject this expense had run up to between three hundred and four hundred thousand dollars a year. The publication of such bulletins as I have referred to above, without being specifically provided for in the Appropriation Bills, if the practice be continued, may reach amounts never contemplated. I would suggest, therefore, that in making up the annual Appropriation Bills these items of the various departments which issue bulletins should be provided for so that the Comptroller may have

full knowledge as to the extent of the printing contract and that large deficiencies for printing expense may thus be avoided.

GOOD ROADS.

Four hundred and eighty-four miles of road have been improved by State aid since the enactment of chapter 115 of the Laws of 1898. The counties have already contributed their half of the expense for building six hundred and nineteen miles for which plans are now ready. Petitions have been presented for the construction of 3,250 miles. The total mileage of roads in the State is 74,097. In order to form a perfect system of highways through the State it is estimated that the improvement of not more than ten per cent. of the total mileage will be necessary. In other words, in order to secure a system of good roads throughout the State, the total ultimate mileage would be about 7,500 miles. The counties have provided for their half of the expense for 1,103 miles of improved roads while the State has contributed its proportion for only 484 miles. It is estimated that $2,801,000 will be required from the State to complete this 1,103 miles.

While it has taken a number of years for this system of road improvement to grow into popular favor, it will be seen that probably within the next six or eight years all necessary roads will be under construction or will have been completed, provided funds are available which will give a perfect system of highways throughout all portions of the State. This, with the State's contributions for the repair of roads in counties which have adopted the money system, ought to give to New York a magnificent system of highways. Some changes are necessary in the good roads laws in order to protect and repair these roadways. These necessities can be met by amendment of the existing statute. While it is not contemplated that the repairs to these roads shall be the State's duty, except in so far as

provided under the so-called Plank Law, yet there should be supervision by the State in order to insure the maintenance of these improved roads. With this end in view it might be proper to provide for State supervision over State roads by giving to the State Engineer and Surveyor such jurisdiction as will always secure uniform plans for repairs in all counties in the State.[11]

GRADE CROSSINGS.

With the improvement of the canals, with better roadways, and with greater facilities of all kinds for transportation, the resultant benefit should be of a satisfactory character. The approval of an item in the last Appropriation Bill for the change of grade crossings in the city of Schenectady brings up an important question for consideration by the Legislature. As is well known, heretofore almost all of these improvements, so far as the State has been concerned, have been restricted to the rural communities. The State has declined to aid in the construction of roadways within the boundaries of the cities. But it is the State's duty to protect the lives of its citizens, whether in the cities or rural communities. Under existing laws the State contributes twenty-five per cent., the locality twenty-five per cent. and the railroads fifty per cent. for removing crossings at grade. There have been, however, no appropriations for any single piece of work such as that approved by me for the removal of crossings at grade in the city of Schenectady. If the policy of the State is to continue along this line it would be well to define some maximum limit to which it should go, and the whole work thereafter should be under the control of the Railroad Commission, appropriations being made in accordance with their recommendations. It would be well also to prohibit by

[11] Chapter 643, passed May 9, appropriated $1,500,000 for highway improvement. By other statutes the good roads law of 1898, chapter 115, was amended in several particulars, relating to matters of detail.

statute any future grade crossings in the State in the construction of railroads so that this expense may be guarded against in the future. It will certainly grow to alarming proportions otherwise, unless the localities have their interests in this direction sufficiently protected.[12]

PERSONAL TAX ASSESSMENTS.

The personal assessments of the State, according to the equalized valuations of 1902, amount to $672,149,054. Of this amount $115,412,815 are not assessed locally for State purposes; so that the total amount of personal property assessed locally for all purposes is $556,736,239. It is well known that while the assessed valuation of real estate has grown very largely each decade, that the percentage of increase of personal assessments is very small. The total property standing upon the assessment rolls of Greater New York amounts to $526,400,139, or about 78 per cent. of the total for the State, while its percentage of the State's real estate assessment is but 66 per cent. It would appear from this that in Greater New York personal property is assessed to a greater degree than in almost any other county of the State. Much of this assessment in New York City is occasioned by taxation upon mortgages which should not exist and which is a positive burden to many and in frequent cases takes at least fifty per cent. of the income from such property. Power should be vested somewhere for such treatment of this class of personal property in its contribution to the expenses of government as would tend to minimize this unjust proportion of payment of taxes.

INVESTIGATION OF THE LAW'S DELAYS.

The commission appointed in pursuance to my recommendation to examine into the law's delays in the greater

[12] The supply bill, chapter 729, appropriated $150,000 for grade crossing purposes.

judicial departments of the State has steadfastly pursued its investigation since its appointment and will report to you its findings. I am convinced from knowledge that has been imparted to me and from suggestions that have been made, that if its recommendations are enacted into law, the result will tend to make more certain immediate consideration of litigated claims and bring about a betterment of conditions in the various courts of the State.[13]

CORPORATION LAWS.

The corporation laws enacted in 1901 show gratifying results. Prior to the passage of these laws, for the year 1900 there were but 2,329 incorporations, with a total capitalization of $306,613,355; while for the year ending September 30, 1903, there were 3,828 incorporations, with a capitalization of $424,830,500. The number of companies increasing their capital stock during this year was 572, with a total increase of $261,834,150. These figures show that the recent laws are encouraging corporations to domicile within New York.

It is suggested that the Insurance Law be so amended as to provide that co-operative insurance companies' certificates be filed in the Insurance Department, instead of in the Secretary of State's office, as this class of companies is provided for by the Insurance Laws. It is also recommended that certificates of corporations, incorporated under the Insurance Law shall be filed with the Insurance Department alone. As the law stands to-day the certificates of incorporation of such companies are not filed with the Secretary of State, but subsequent certificates of such companies are required to be. The recommendation which I have made is to avoid a duplication in the filing of certificates.

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[13] See 1903, note 16, *ante*, p. 516.

It is also suggested that the Code of Civil Procedure be amended so as to protect the name of a corporation when it is proceeding to effect a change of name under section 2111 of the Code of Civil Procedure.[14]

THE UNITED STATES LOAN DEPOSIT FUND.

In 1837 the United States Government distributed a certain portion of its surplus to the various States under a statute which provided for the loaning of such money to individuals. This fund is known as the United States Deposit Fund. Two Loan Commissioners are appointed in each county, whose duty it is to supervise the loaning of these monies. Under this law the State is obliged to preserve the integrity of the fund, so that if any loss occurs the State must make it good out of its own revenues, if there should not be enough interest derived from the fund available for this purpose. The result of the operation of this law has been that the interest upon it has averaged but two and two-tenths per cent., while other funds invested by the State Comptroller have an average of three and seventy-five hundredths per cent. Recent losses in various parts of the State have made it apparent that a more careful examination of property upon which loans are sought should be made before they are allowed, and that power should be lodged in some one competent head rather than distributed among loan commissioners all over the State.

I would suggest, therefore, the amendment of the existing statute so as to permit the loaning of this fund upon municipal and local bonds in order that the State may be

[14] The Governor's suggestion as to protecting the name of a corporation pending a change by a judicial proceeding was embodied in chapter 110, passed March 23, which amended the Code of Civil Procedure, section 2413, by adding a provision that on filing in the office of the Secretary of State a copy of the petition and notice of motion for a change of the name of a corporation, the name proposed should be reserved, and could not be assumed by any other corporation during the time specified in the section.

more fully protected and a larger rate of interest secured. Of course it would not be desirable to disturb existing loans unless investigation should establish the fact that the margin beween the loan and the value of the property is such as to make it imperative either that the amount should be reduced or additional security furnished. The Legislature in the year 1897 did make an amendment as suggested above, but objections were raised perhaps because of calling in of loans, thereby imposing certain hardships, and the law was repealed at the next session of the Legislature. There was, therefore, no opportunity afforded to thoroughly test the suggestion which I now again make for the handling of this money. The State Comptroller has taken this subject up in detail in his annual report, and I would respectfully direct your attention to the suggestions and recommendations which he makes, with which I am in full accord.

DEPARTMENT OF HEALTH.

The report of the State Commissioner of Health shows that nearly 25,000 cases of typhoid fever, with a mortality of 1,635 cases, occurred in the State during 1903. Similar epidemics have occurred in other States. Inasmuch as typhoid fever is very frequently caused by polluted supplies of potable water, it is now classed as a preventable disease. The general acceptance of this view resulted in the passage of chapter 468 of the Laws of 1903, entitled "An act to amend the Public Health Law relative to the discharge of sewage and other waste matter into the waters of the State."

The proper enforcement of the various provisions of this law is vested in the State Department of Health, and upon its wise and judicious enforcement will depend the lives and health of the people in a large degree.

A complete record of the sources of public water supplies, and the possible conditions which may produce epidemics of typhoid fever or other infectious diseases, should be

secured by the Health Commissioner, and I recommend that an appropriation be granted by the Legislature for this purpose.[15]

The bureau of vital statistics of the Department of Health is the custodian of all records of births, deaths and marriages which have occurred since the establishment of the State Board of Health in 1880.

Each one of this vast number of certificates (which is annually increased by about half a million) is a legal document, and may be required for judicially establishing property rights, the legitimacy of children, and other questions intimately affecting citizens of the State.

Enlarged quarters in the Capitol have been provided during the year for the preservation of these documents, which will suffice for many years to come. Additional facilities for filing and for permitting the inspection and preservation of these records should be provided.[16]

HOME RULE.

The object of certain articles in the amended Constitution was to give to every locality in the State a measure of home rule which had been denied theretofore. The many interferences with the rights of cities it was thought had been sufficiently guarded against by placing within the hands of the respective mayors veto power over all acts affecting their cities.[c] A protection in another direction was by giving to them the absolute control of all franchises in their localities without interference from the State.[d] The State has placed within the municipalities the absolute power to prevent the disposal of valuable rights without

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[15] The appropriation act, chapter 728, contained an item of $14,000 to be used by the health department in the investigation of various specified contagious and other infectious diseases.

[16] The supply bill, chapter 729, contained an item of $6,000 for the public health department for filing cases and other office equipment.

[c] Const. 1894, art. 12, § 2.

[d] Const. 1894, art. 3, § 18.

securing adequate compensation therefor. Judicial findings have frequently set aside laws which interfered with these rights which for partisan or other purposes were sought to be secured by other than municipal control. The power which the State from time to time has thus placed with the cities would seem to be almost ample for absolute and positive autonomy. While the State has reserved to itself certain taxing powers, the object of which is of as much benefit to the cities as to the State, there seems to be yet misunderstanding and friction which it should be your duty to eliminate. Police power is often exercised for partisan effect. Laws of long standing on the statute books and which for political effect or other reasons have been left unrepealed, have been made agencies frequently for persecution and intolerable abuse of authority. A sentiment has grown up that the cities are not securing adequate return for their support in maintaining the State. The rural communities on the other hand resent the imputation that they are escaping their just proportion of the expense of the State's maintenance. These disagreements have been the outgrowth of a misunderstanding of the true conditions. Laws, however, were made to be enforced and no complaint can be made of an honest enforcement. It would seem natural and proper, inasmuch as it has been the policy of the State to afford home rule to municipalities, that in every respect majorities should control. That which the people of a locality demand within their own boundaries should be accorded without interference by other sections of the State, provided, however, that their action does not interfere with the rights of any or all of the people.

It might be proper for the Legislature to take up these various issues or matters of difference and attempt to formulate some plan whereby the matters complained of can be cured, and a more general fulfillment of the constitutional enactment arrived at. These questions of difference might be submitted to the people, and under our

theory of government their conclusions and determinations would probably be satisfactory to all citizens of the State. At least there would come from such an investigation as I have suggested a realization of the duty and responsibility of each section of our commonwealth to every other. It would doubtless result in the correction of many things which are now a constant source of friction, misunderstanding and complaint.

SPECIAL LAWS.

The Legislature annually passes many bills under the guise of general acts which in effect are purely local in their character. It is not always possible to entirely eliminate this class of legislation. In prior messages I have directed the attention of the Legislature to this subject and have requested the framing of bills which would enable localities to take advantage of general statutes rather than special acts. This is particularly true of measures having to do with bond issues, the legalizing of the acts of notaries, amendments to village and city charters, and permissions to go to the Court of Claims. It would seem that general statutes ought to be provided whereby some authority would be empowered to act upon these matters without the necessity of recourse to the Legislature. These statutes which are intended apparently for specific cases sometimes have very serious general effects. Legislation which had for its object the simplification and codification of our laws, would be of incalculable benefit to every citizen of the State. I commend these subjects to your thoughtful and careful consideration.

AGRICULTURE.

It has been the policy of the State to secure and disseminate such information as might be of benefit to the farming interests of the State. Laws have been enacted and rigidly enforced for the protection of food supplies

against adulteration, with the object of guarding the health of the people and of securing to the farming interests such advantages as they are entitled to. Competition with the richer lands of other States makes scientific farming to-day more necessary than ever before. A thorough understanding of our resources and the necessities of our cities is important, because it will make the farming industry more profitable and consequently of greater benefit to the commonwealth. We have now two institutions in the State which devote attention to agricultural interests, one working along on experimental scientific lines, and the other teaching the science of farming. Other commonwealths have contributed largely in support of agricultural education, and it is important that we should also make adequate provision for this necessary instruction. There have been many applications from the agricultural interests for such recognition. Without making any specific recommendations as to the line which you should follow, I do desire to impress upon you the necessity for complying with these demands, which I believe to be reasonable and in the interest of New York.[17] The Attorney-General will call your attention to the inconsistencies of some parts of the so-called Vinegar and other laws which are administered by the Agricultural Department. Numerous mistrials and verdicts against the State have resulted from attempts to enforce them. If they are to be enforced they should be re-enacted upon lines which will avoid the constitutional objections which have been raised successfully against prosecutions under them. I am in full accord with the recommendations which he will make to you.

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[17] Chapter 655, passed May 9, established a State College of Agriculture at Cornell University, and appropriated $250,000 for the construction and equipment of suitable buildings therefor, which buildings were to be and remain the property of the State. The land on which the buildings were to be erected was to be conveyed by Cornell University to the State. The Agricultural College was to be under the supervision and management of the University.

REPORTS OF DEPARTMENTS.

The reports of the various Departments which will be submitted to you all show results which are satisfactory. They are commended to your careful consideration because a synopsis of their contents in a communication of this character would fail to do justice to them. So far as possible the same fair treatment of all Departments of the State, the same conservative action upon the part of the Legislature in dealing with them should prevail as has been our policy for so many years, bearing in mind always the pledges we have made to the people. Your action should be determined by the necessities, the benefits to be derived, and the maintenance of a government that shall in every way be responsive to the wishes of the people.

B. B. ODELL, JR.

SPECIAL MESSAGES.

January 20. To the Senate: Transmitting the annual report of the State Civil Service Commission.

January 21. To the Senate: Transmitting the report of the director of the New York State College of Forestry of Cornell University, together with a communication from President Schurman accompanying the same.

January 25. To the Senate: Transmitting the report of the commission appointed to inquire into the delays and expenses in the administration of justice in the counties of New York and Kings. [See note 13.]

January 25. To the Senate: Transmitting the annual report of the Adjutant General.

February 17. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill "to provide that 'the university of the State of New York' shall be governed and its corporate powers exercised by eleven regents, and to provide for their election; and to

provide for a department of education and the election of a commissioner of education."

The bill was passed and became chapter 40 on the 8th of March.

February 18. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 18, 1904.

"Under and by authority of chapter 147 of the Laws of 1903, empowering me to appoint a board, not to exceed five, of expert engineers, I have selected the following for such positions:

Edward A. Bond, *Chairman.*
Thomas W. Symons,
William A. Brackenridge,
Elmer L. Corthell,
Alfred B. Fry.

I have fixed their salaries at seven thousand five hundred dollars each per annum, excepting the chairman, whose salary I have fixed at eight thousand dollars per annum.

This is transmitted for your information and for the purpose of record.

B. B. ODELL, JR."

March 17. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, amending the election law in relation to election officers in cities. The bill was passed and became chapter 70 on the 17th of March.

April 5. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill "to reduce the expense of maintenance of the Albany county penitentiary and provide for the management thereof; to abolish the office of superintendent or principal keeper thereof; to au-

thorize its use as a county jail; to give authority to the board of supervisors to discontinue its use as a penitentiary and to sell and dispose of the penitentiary property; and to repeal chapter 261 of the Laws of 1885, entitled 'An act in relation to the management of the Albany penitentiary,' and the acts amendatory thereof," as amended. The bill was passed and became chapter 336 on the 16th of April.

April 5. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending chapter 615 of the Laws of 1894, entitled "An act to revise the charter of the city of Elmira." The bill was passed and became chapter 367 on the 26th of April.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, amending the act providing for rapid transit railways in cities of over one million inhabitants. The bill was passed and became chapter 562 on the 3d of May.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, relative to the construction of an independent railway system by cities of over one million inhabitants. The bill was not passed.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill regarding rapid transit in cities of over one million inhabitants. The bill was passed and became chapter 564 on the 3d of May.

April 8. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill providing for the payment of fines, penalties or forfeitures imposed or collected for taking part in the game of policy. The bill was not passed.

April 8. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the charter of Oneida. The bill was passed and became chapter 273 on the 13th of April.

April 8. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending

the New York charter relative to the inspection of illuminating gas. According to the records of the Executive Chamber this certificate was sent to the Legislature on the day it bears date, but the journals do not show that it was received. It should be noted, however, that according to the legislative custom an emergency certificate is not noted on the journal unless it is actually used. The bill mentioned in the certificate was not passed.

April 8. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, relative to the municipal court of New York. The bill was passed and sent to the city, becoming a thirty-day bill; but it was not accepted.

April 8. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the charter of New York, providing for the appointment by the board of health of the city of New York, of a chief medical examiner and medical examiners, and prescribing their powers and duties; creating a bureau of medical examiners in the department of health, abolishing the office of coroner in the city of New York upon the expiration of the terms of office of the coroners now in office in said city, and providing for the performance of the powers and duties exercised by the coroners in such city. The bill was passed and sent to the city, becoming a thirty-day bill; but it was not accepted.

April 13. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill. The bill was passed and became chapter 729 on the 11th of May.

April 13. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, relative to sales of merchandise in bulk. The bill was passed and became chapter 569 on the 3d of May.

April 13. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in regard to tenement-houses in cities of the first class. The bill was

not passed. Another bill relating to fireproof tenements was passed and became chapter 346 on the 16th of April.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, relating to the width of tires. The bill was not passed.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the charter of Binghamton. The bill was passed and became chapter 553 on the 3d of May.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to the municipal court of New York. The bill was passed and became chapter 625 on the 6th of May.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill relative to the city court of New York. The bill was passed, but it was not approved by the Governor. It was included in the omnibus veto.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the highway law relative to the removal of obstructions caused by snow and the prevention of such obstructions. The bill was passed and became chapter 478 on the 28th of April.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of the tax bill. The bill was passed and became chapter 731 on the 11th of May.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the charter of Oneida. The bill was passed and became chapter 572 on the 3d of May.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill for the protection of persons and property within the village of Painted Post. The bill was passed and became chapter 483 on the 28th of April.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, amending the Greater New York charter, relative to the classification and instruction of criminals and misdemeanants. The bill was passed and became chapter 627 on the 6th of May.

April 14. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill the supplemental supply bill. The bill was passed and became chapter 730 on the 11th of May.

April 15. The Legislature adjourned without day.

THIRTY-DAY BILLS.

May 10. "The following city bills remaining in my hands and previously undisposed of are not approved because of defective drafting, questionable propriety, objectionable provisions, and duplication of bills already signed:

Senate bill number 336, entitled "An act to authorize the board of estimate and apportionment of the city of New York, in its discretion, to examine, audit and allow the alleged claims of persons who have furnished work, labor and services or materials or supplies under request order or direction of the fire department of the city of New York."

Senate bill number 791, entitled "An act to amend chapter five hundred and eighty of the Laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals.'"

Senate bill number 566, entitled "An act to amend chapter five hundred and forty-one of the Laws of eighteen hundred and sixty-five, entitled 'An act to incorporate the city of Newburgh,' and the several acts amendatory thereof, in relation to the sale of lands purchased by the city at tax sales."

Senate bill number 1339, entitled "An act to amend the Greater New York charter, relative to commitments to the State Reformatory for Women at Bedford."

Senate bill number 1306, entitled "An act to amend section seven hundred and twenty-eight of the Greater New York charter, in relation to assignments and promotions in the fire department."

Senate bill number 1137, entitled "An act to amend chapter five hundred and thirty-five of the Laws of nineteen hundred and three, relative to the issue of bonds for the purpose of abating all nuisances in the Clark and Skinner canal in the city of Buffalo."

Assembly bill number 494, entitled "An act in relation to the city of Troy, and the several departments thereof, authorizing the said city to ascertain, determine, audit and allow the claims of John Riley, William Gaffigan, Stephen Duffy, Morris Mann, John Burke, William H. Evers, Edmund Sheedy and John Crossen, school janitors employed by the board of school commissioners of the department of public instruction of said city during the year nineteen hundred, and to authorize said city to issue its bonds to raise money for the purpose of paying the said claims."

Assembly bill number 1006, entitled "An act to amend sections sixteen hundred and forty eight and sixteen hundred and forty nine of the New York city consolidation act of eighteen hundred and eighty-two, relative to the selection of grand jurors."

Assembly bill number 1502, entitled "An act to legalize and confirm and provide for the enforcement and collection of certain assessments for local improvements in the city of Syracuse."

Assembly bill number 1818, entitled "An act to confer jurisdiction upon the Court of Claims to hear, audit and determine the alleged claim of the city of Auburn against the State, for a local improvement consisting of laying (and paying for the construction of), a sidewalk in front of lands in said city upon which is located the State prison, and to render judgment therefor."

Assembly bill number 1729, entitled "An act to amend the Greater New York charter, revised, in relation to the payment of awards for damages."

Assembly bill number 920 (Senate reprint No. 1016), entitled "An act to amend the Greater New York Charter, relative to conferring power upon the board of estimate and apportionment to acquire lands in the city of New York for play grounds and to provide for the improvement thereof."

Assembly bill number 1401, entitled "An act to amend the Greater New York charter relative to special revenue bonds."

Assembly bill number 1497, entitled "An act to amend the Greater New York charter, relative to the fund for street and park openings."

Assembly bill number 881, entitled "An act to amend the Greater New York charter, in relation to the purchase of supplies for the various departments of the city of New York."

Assembly bill number 894 (Senate reprint No. 1015), entitled "An act to amend chapter three hundred and twelve of the laws of eighteen hundred and ninety-eight, entitled 'An act increasing the jurisdiction of the city court of Albany and relative to a jury list in said court and regulating the practice therein,' relating to the jurisdiction thereof and the practice therein."

Assembly bill number 1371 (Senate reprint No. 1318), entitled "An act to amend the Greater New York charter, relative to additional marshals for the municipal court of the city of New York."

Assembly bill number 1629, entitled "An act to amend chapter fourteen of the laws of eighteen hundred and eighty, entitled 'An act to further amend chapter one hundred and forty-three of the laws of eighteen hundred and sixty-one, entitled "An act to amend and consolidate the several acts in relation to the charter of the city of Rochester," and to consolidate therewith the several acts in relation to the charter of said city."

Assembly bill number 1925 (Senate reprint No. 1374), entitled "An act relative to the city court of the city of New York."

Assembly bill number 1885, entitled "An act to release to the devisees and persons interested under the will of Charles Booth, deceased, all the right, title and interest which the people of

the state of New York acquired upon the death of the said Charles Booth by reason of his alienage, in and to all lands in the city of New York whereof said Charles Booth died seized."

Assembly bill number 1071, entitled "An act to provide for the payment of the claim of H. A. Dimond, executrix of the estate of John Dimond deceased, for labor and material furnished in grammar school number seventy-six in the nineteenth ward of the city of New York."

Assembly bill number 1286, entitled "An act to amend chapter one hundred and twenty of the laws of eighteen hundred and eighty-six, entitled 'An act to revise the charter of the city of Lockport,' and the several acts amendatory thereof and supplemental thereto, relating to the power of the common council of said city to regulate and license the issuance, distribution, use and exchange of trading stamps."

Assembly bill number 1286, entitled "An act to amend section one hundred and thirty-one of chapter one hundred and twenty of the laws of eighteen hundred eighty-six, entitled 'An act to revise the charter of the city of Lockport,' and the several acts amendatory thereof and supplemental thereto, relating to contracts for lighting the city of Lockport."

Assembly bill number 1988, entitled "An act to authorize the city of New Rochelle to borrow money and issue bonds of said city therefor, in addition to the bonds for the same purpose already issued, for the purpose of completing the widening and improvement of North avenue, the grading and filling of Horton avenue, and the grading, filling and improvement of Sickles avenue, Spring street and William street and William street extension; the construction of a stone dock in Hudson park, and the completion of the construction of the storm water drain through Liberty avenue, Elm street, Meadow lane, Circuit road and Woodland avenue, in said city; and to legalize the bonds already issued on account of such improvements."

May 11.

Veto of items in the appropriation act, chap. 728.

OFFICE OF THE SECRETARY OF STATE.

"Page 13—lines 22 to 24. 'For the expenses and disbursements of the secretary of state, which shall be allowed to him in lieu of and in full of expenses, one thousand dollars ($1,000) payable quarterly.'

This item is disallowed because a similar appropriation is carried in the supply bill, and this is, therefore, a duplication.

OFFICE OF THE STATE ENGINEER AND SURVEYOR.

Page 25—lines 22 to 26. 'For salaries and compensation of the engineers employed upon the ordinary repairs of canals, including the incidental expenses of such engineers, thirty thousand dollars ($30,000), or as much thereof as may be necessary.'

In view of the fact that there is a similar appropriation carried in the supply bill for the current year, and in view of the actual beginning of the work upon the canal, this appropriation would seem to be unnecessary.

DEPARTMENT OF PUBLIC INSTRUCTION.

Normal Schools.

Page 31—lines 1 to 3. 'of the inspector of normal schools, Indian schools, and institutions for the instruction of the deaf, dumb and blind, twenty-five hundred dollars.'

Page 31—lines 4 to 5. 'and for his necessary traveling expenses not to exceed eight hundred dollars.'

Page 35—line 21. 'Six inspectors, twenty-five hundred dollars each.'

These items are disapproved because after having submitted the same to the department of education I am given to understand that the unification act will make unnecessary this dual employment, which heretofore existed.

VISUAL INSTRUCTION.

Page 33—lines 20 to 27 and Page 34—lines 1 to 10. 'For the state superintendent of public instruction for the American museum of natural history in the city of New York, for continuing the instruction of natural history, geography and kindred subjects in the several state normal schools, the normal college of the city of New York, the training schools for teachers in the city of New York, the teachers' institutes in the counties of the state, and to the teachers in the common schools of the city of New York and vicinity as per contract entered into between the state superintendent of public instruction and the American museum of natural history of the city of New York as authorized by chapter ninety-seven, laws of eighteen hundred and ninety-seven, and for complying with the provisions of chapter four hundred eighty-nine, laws of eighteen hundred ninety-nine, extending such instruction to the cities and villages of the state that have or may have a local superintendent of schools, thirty-eight thousand dollars ($38,000), or so much thereof as may be necessary.'

An inquiry was made of the commissioner of education concerning this item, and he recommends that it be disallowed, because of the unsatisfactory conditions which surround the contract referred to, and the lack of knowledge by any one in the department as to the efficiency of this work and its necessity. He believes that it can be well disallowed this year, and that no harm will come from such action, because of the great accumulation of material which is or should be property of the State. He recommends that pending such an investigation, the contract should not be renewed.

STATE DEPARTMENT OF EXCISE.

Rebates.

Page 63—lines 4 to 7. 'For the payment of rebates on surrender of liquor tax certificates, under the provisions of

the liquor tax law, two hundred forty-five thousand dollars ($245,000), or so much thereof as may be necessary.'

This item is disallowed because an appropriation of $303,000 has already been provided for this purpose, which, with the reappropriation of about $22,000 will leave a sufficient amount available for this purpose for the current year. If a deficiency should occur, it can be provided for by the Legislature of 1905. There seems to be, therefore, no immediate necessity for this item this year.

May 11.

Veto of items in Assembly bill. chap. 729.— The Supply Bill.

"SECRETARY OF STATE.

Page 9—lines 1 and 2. 'For the first deputy secretary of state, three hundred seventy-five dollars, payable quarterly, in full and in lieu of all expenses.'

A similar item is carried in Assembly bill number 1962. [Chap. 728.] This seems to be a duplication.

Page 9—lines 18 to 22. 'For the construction of a gallery and book cases in the corporation department of the secretary of state, two thousand five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the secretary of state on the audit of the comptroller.'

I am informed by the Secretary of State that the work contemplated by this item is unnecessary at present.

COMPTROLLER.

Page 14—lines 9 to 13. 'For the comptroller, for the repayment to the several counties for the maintenance of county roads pursuant to chapter two hundred and sixty-nine, laws of nineteen hundred three, forty-two thousand nine hundred seventy-one dollars and ninety-three cents, or so much thereof as may be necessary.'

This item is disallowed because a very liberal appropriation for this purpose is carried in Assembly bill number 1732 [chap. 643], which has been approved by me.

Page 14—lines 14 to 21. 'For the comptroller for the payment of assessments against state property for local improvements in the city of Rochester, heretofore made and duly approved by the comptroller, twenty-one thousand four hundred ninety-four dollars and fifty-two cents, or so much thereof as may be necessary, to be received and accepted in full of all claims and demands against the state of whatever so kind and character made by the city of Rochester against the state.'

This item is disallowed because it is questionable whether the State should assume responsibility for local improvements, and until some general policy is determined upon this audit by the Legislature should be disapproved. There is no question that some general law covering these cases should be enacted.

FOREST, FISH AND GAME COMMISSION.

Page 30—lines 9 to 14. 'For defining, classifying and describing the forests in the forest preserve in conjunction with the bureau of forestry of the United States department of agriculture, ten thousand dollars, or so much thereof as may be necessary, provided that an expenditure of equal amount shall be made by the bureau of forestry for the same purpose.'

This item is disallowed because there seems to be no immediate necessity for this work, and in view of the fact that the state forest, fish and game commission has already a very fair classification, certainly all that is necessary at present.

DEPARTMENT OF LABOR.

Page 31—lines 20 to 24. 'For the deficiency in the appropriation for the expenses of the first and second deputies, their assistants, the mediator, the superintendent of

licenses, the statisticians, the special agents, and the deputy factory inspectors, two thousand three hundred dollars, or so much thereof as may be necessary.'

Page 31, lines 25 to 27. 'For the deficiency in the appropriation for the expenses of the commissioner, five hundred dollars, or so much thereof as may be necessary.'

There seems to be no justification for these expenditures.

LUNACY COMMISSION.

Page 33, lines 9 to 26, and page 34, lines 1 to 5. 'The balance of two thousand seven hundred three dollars and ninety-four cents remaining unexpended of the fund for salaries of clerks, messengers, experts and other employees in the office of the state commission in lunacy for the fiscal year ending September thirtieth, nineteen hundred three, and the unexpended balance of eight thousand dollars of the sum of twenty-six thousand dollars appropriated by the legislature of nineteen hundred three, for the salaries of clerks, messengers, experts and other employees in the office of the state commission in lunacy for the fiscal year ending September thirtieth, nineteen hundred four, is hereby reappropriated and made available to reimburse state hospital treasurers, for monies expended by them in securing clerical assistance in the performance of their duties as such treasurers, and to cover the services of such state hospital employees as were assigned to the extra duty of assisting such hospital treasurers, and who have not received compensation therefor, from the date of the taking effect of chapter twenty-six, laws of nineteen hundred two, to September thirtieth, nineteen hundred three, and the comptroller is hereby authorized to honor such drafts as may be made by state hospital treasurers to meet these expenses, provided the customary detailed estimates have been first submitted to and approved by the state commission in lunacy.'

Liberal appropriations have been made in other bills for these purposes, and I can see no good reason for permitting an increase along this line.

Page 34—lines 5 to 11. 'Also to reimburse William H. Kimball, formerly treasurer of the Manhattan state hospital, for monies expended by him for premiums on a surety bond required from him as such treasurer by the managers of said state hospital, one thousand four hundred seventy-five dollars, or so much thereof as may be necessary, to be paid by the comptroller upon vouchers approved by the state commission in lunacy.'

There is no authority in law for this payment, and I can see no good reason why it can be approved.

Page 34—lines 15 to 18. 'for deficiency in the appropriation for the support and maintenance of state hospitals other than salaries and wages of officers and employees, for the year ending September thirtieth, nineteen hundred four, three thousand dollars.'

I have gone over this item with the commission in lunacy, and find that the appropriations already made for the year ending September thirtieth, nineteen hundred and four, and the new appropriation for the year beginning October first, nineteen hundred and four, for these various items of maintenance and support, being very much more than for the present year, will give all the funds necessary for meeting this deficiency. The item is therefore unnecessary.

DEPARTMENT OF PUBLIC BUILDINGS.

Page 41—lines 22 to 26. 'For the construction of offices and office facilities in the finished and the unfinished space on the sixth floor of the capitol, for the use of the state, under the direction of the trustees of public buildings, and the supervision of the superintendent of public buildings,

according to plans and specifications of the state architect, six thousand dollars, or so much thereof as may be necessary.'

Page 42—lines 1 to 7. 'For finishing the room in the northeast pavilion on the fifth floor of the capitol, now occupied by the department of public instruction, and the corridor leading to it, and for furnishing for the use of the commissioner of education, the space between the room in the northeast pavilion and the office occupied by the state board of health, ten thousand four hundred dollars, or so much thereof as may be necessary.'

Page 42—lines 8 to 16. 'For the necessary construction, repair and alteration of mezzanine and other flooring and office facilities in the department of education at the capitol incident to the consolidation of the university of the state of New York and the department of public instruction, in accordance with plans and specifications of the state architect approved by the trustees of public buildings or the superintendent of public buildings, and for the furnishing and equipping of the same, ten thousand dollars, or so much thereof as may be necessary.'

These items are disapproved because there appears to be no immediate necessity for them, and these improvements can well be postponed until another year.

SUPERINTENDENT OF PUBLIC WORKS.

The following items are all disapproved because of lack of approval by the superintendent of public works.

Page 43—lines 26 and 27, and page 44—lines 1 to 6: 'For the superintendent of public works five thousand dollars or so much thereof as may be necessary, for filling portions of the Clark & Alvord mill race and side-cut canals west of Clark street in the first ward of the city of Syracuse, with solid material, and when such mill race and side-cut canals are properly filled with solid material to the

present grades of existing streets, the state shall no longer maintain the present bridges over the same or the approaches thereto.'

Page 44, lines 7 to 14: 'For the cleaning out of state ditches along the line of the Erie canal and Champlain canal, which became filled during the progress of the canal enlargement work in order to prevent further overflow of land and damage to private property in the vicinity of said ditches, seventy-two thousand, three hundred fifty-eight dollars, or so much thereof as may be necessary, said work to be progressed by the superintendent of public works at as early a date as conditions make favorable.'

Page 45, lines 6 to 10: 'For the superintendent of public works, for the dredging of the inlet to Cayuga Lake at or near the city of Ithaca, and for repairing the state pier at the mouth of Cayuga inlet, as provided by chapter four hundred thirteen, laws of nineteen hundred two, three thousand dollars, or so much thereof as may be necessary.'

Page 45—lines 15 to 24: 'For the superintendent of public works, twelve thousand dollars, or so much thereof as may be necessary, is hereby appropriated for completing the repairs and improvement of the Castorland dike and bridges between the main shore at a point opposite Castorland depot and the bridge crossing Black river between the towns of Croghan and Denmark in Lewis county; and for repairing, improving and raising the Castorland dike and bridges in the town of Croghan, between Naumburg and the said bridge, the work to be done upon plans to be furnished by the state engineer and surveyor.'

Page 46—lines 3 to 10: 'For the purpose of making a cut-off at the junction of the abandoned Chenango canal with Baldwins creek in the village of Oxford, Chenango county, and restoring to its original channel, the waters of said Baldwins creek and conducting the same for a distance of about sixteen rods into the Chenango river and

constructing a culvert in connection with said work, upon plans and specifications to be prepared by the state engineer and surveyor, four thousand dollars or so much thereof as may be necessary.'

Page 46—lines 15 to 18: 'For the superintendent of public works four thousand dollars, or so much thereof as may be necessary for dredging, cleaning out and improving channel, connecting Moriches bay with Shinnecock bay on Long Island.'

Page 46—lines 19 to 23: 'For repairs to the public highway in the town of Piercefield, Saint Lawrence county, the same being part of the state road from Childwood station to the hamlet of Childwood in said town, two thousand five hundred dollars, or so much thereof as may be necessary.'

Page 46—lines 24 to 27: 'For building and completing a dike on the north side of the Chemung river between a point near Columbia street in the city of Elmira in Chemung county, and the western limits of said city, ten thousand dollars, or so much thereof as may be necessary.'

Page 47—lines 17 to 19: 'For repairing and cleaning the Orville feeder, in the town of DeWitt, five thousand dollars, or so much thereof as may be necessary.'

Page 47—lines 20 to 26: 'For deepening, widening and lengthening Golden Hill Creek, and its tributaries, and constructing new tributaries where necessary, and providing means for drainage where necessary, in the towns of Somerset and Hartland, Niagara county, in order to drain lands in said towns flooded by back-water occasioned by the overflow at the flood gates of the Erie canal, twenty-five hundred dollars, or so much thereof as may be necessary.'

Page 48—lines 16 to 25: 'For the repair of the highway in the town of Madison, Madison county, leading from Madison Center to Hamilton, across the waters of Madison res-

ervoir; for raising, widening and repairing said highway on either side of the said bridge; repairing the culverts on said highway, and for raising and protecting the banks of the highway, which crosses said reservoir, near the central part thereof and for repairs to the highway leading from Solsville to Oriskany Falls, where the same has been damaged by the flow of surface water from said reservoir, fifteen hundred dollars, or so much thereof as may be necessary.'

Page 49—lines 3 to 7: 'For the purpose of repairing and putting in proper condition for travel the Montezuma turnpike across Montezuma marsh, four thousand dollars or so much thereof as may be necessary; the work to be done upon plans and specifications to be prepared by the state engineer and surveyor.'

Page 49—lines 8 to 13: 'For the purpose of restoring about six hundred feet of the roadway on the west shore of Owasco lake, in the town of Fleming, Cayuga county, near the Four-Mile house and protecting the same with rip-rap or masonry where the roadway has been washed out or damaged by the waters of the lake, four thousand dollars or so much thereof as may be necessary.'

Page 49—lines 17 to 27: 'For the superintendent of public works for the purpose of extending the retaining wall on the north side of the channel of the so-called Dry river at Fourteenth street and for constructing an iron fence or guard rail on the said wall, and on the approaches to the Fourteenth street bridge over the Erie canal in the city of Watervliet, and for rebuilding a retaining wall on the north side of the towing path approach of the bridge over the Erie canal at Thirteenth street in said city, four thousand dollars, or so much thereof as may be necessary; the work to be done in accordance with plans and specifications to be prepared by the state engineer and surveyor and approved by the canal board.'

RAILROAD COMMISSION.

Page 51—lines 3 to 13: 'For the board of railroad commissioners the sum of seventy-four thousand eight hundred and ninety-three dollars and eight cents, being the unexpended balance of appropriation made by chapter five hundred ninety-four of the Laws of nineteen hundred two, to carry into effect the provisions of chapter seven hundred fifty-four, Laws of eighteen hundred ninety-seven, entitled, "An act to amend the railroad law and the acts amendatory thereof relative to grade crossings," and the acts amendatory thereof, is hereby reappropriated for the same purpose, such amount having been pledged by determinations of said board to abolish certain grade crossings.'

The one hundred and fifty thousand dollars appropriated in the preceding item seems to be all that is necessary for this purpose.

CHARITABLE INSTITUTIONS.

Page 59—lines 10 to 13: 'For the House of Refuge for Women at Hudson, under chapter five hundred ninety, Laws of nineteen hundred three, for a new boiler, to be reappropriated for a new direct connected electric unit, two thousand five hundred dollars.'

This item is unnecessary as I understand this institution is already provided with a plant, and if it should get out of order and inconvenience caused thereby it would be merely temporary.

MISCELLANEOUS.

Page 61—lines 11 to 15: 'For George H. Thornton, for balance due for reporting Senate committee on cities during the years eighteen hundred and ninety and eighteen hundred and ninety-one, sixteen hundred dollars, which shall be paid and accepted in full for all services and disbursements connected with the above investigation.'

This appropriation was disapproved by me last year. The claim arises for stenographic work in connection with the Fassett Investigating Committee of 1890 and 1891, when a claim for twelve thousand dollars was presented for services rendered in reporting its proceedings. The claim was disallowed by one of my predecessors and subsequently a bill was enacted which permitted the claimant to go to the Court of Claims, which allowed him six thousand dollars as the amount due for his services. Subsequent to this an appropriation was made of four thousand five hundred dollars additional, which I am given to understand was in full settlement. It is now claimed that such was not the understanding. I see no good reason, however, after this lapse of years for granting this additional appropriation after these two settlements by the Legislature and the Court of Claims.'' *

May 11.

Veto of items in Assembly bill, chap. 730, the supplemental supply bill.

'' COMPTROLLER.

'' Page 5 — lines 14 to 17: ' For Charles H. Walts for services and expenses as referee in the case of the People against Phillip B. Armour and others, two hundred and forty dollars, or so much thereof as may be necessary, to be paid on the audit of the comptroller.'

I have no knowledge of the liability of the State for this item. If such a liability exists funds are available in the comptroller's department to cover such a claim.

Page 7 — lines 1 to 7: ' For the Comptroller for assessments against the State, as the owner of Seneca lake and the Seneca and Cayuga canals, for its proportion of the cost of macadamizing Lake street and Lake road, in the

* See *ante*, p. 570.

city of Geneva, six thousand five hundred twelve dollars and twenty-three cents, or so much thereof as may be necessary, said appropriation to be paid only after investigation of the work and on the audit of the Comptroller.'

For the reason that I can see no liability on the part of the State, for this work, this item is disapproved.

STATE ENGINEER AND SURVEYOR.

Page 7—lines 17 to 26, and Page 8—lines 1 to 4: 'The sum of three thousand dollars, or so much thereof as may be necessary, for the purpose of making a survey and estimate of the cost of dredging the channel through Great South Bay and Hempstead Bay between Fire Island and East Rockaway inlet, and for the survey and estimate of cost of construction of a canal between Hempstead Bay and Jamaica Bay in the counties of Nassau, Suffolk and Queens, to a depth of eight feet below mean low water, and of a sufficient width for vessels drawing six feet of water to pass each other in the channel. Such survey and estimate shall be made by the State Engineer and Surveyor, or under his direction, and he shall make a report to the Legislature on or before January fifteenth, nineteen hundred five, containing a detailed estimate of the cost and shall transmit therewith the result of the survey.'

I know of no good reason why the State should assume responsibility for this work.

DEPARTMENT OF EDUCATION.

Page 9—lines 11 to 14: 'To the local board of managers of the State Normal School at Fredonia for furnishing rooms for school societies which lost their property in the destruction of the old building, one thousand dollars.'

This is in effect a donation of public funds to a private use, and is not desirable.

HEALTH DEPARTMENT.

Page 12—lines 6 to 10: 'For the examination of water supplies and systems of sewerage; to aid local health authorities in the enforcement of rules for the protection of the sources of potable water, and for investigation into the most efficient methods of the disposal of sewage, fifteen thousand dollars, or so much thereof as may be necessary.'

The appropriations made in other bills for this department seem to be ample.

NATIONAL GUARD.

Page 13—lines 1 to 11: 'For Williams and Manogue for labor and materials furnished by them in the construction of the State armory at Whitehall, two thousand six hundred and six dollars and twenty-nine cents to be paid by the comptroller on the written requisition of the armory commission, and upon presentation to the comptroller by said firm of an affidavit stating the amount of their contract and the amount or amounts which have been paid to them by Andrew Douglas or his referee in bankruptcy. There shall also be filed with the comptroller at the time payment is made a release of any further claim or claims for labor and materials furnished by said firm in the construction of said armory.'

I cannot see the justice of this claim. The State has fulfilled its obligations, and there is no justification for the State's assuming a loss which the contractor suffered in performing his contract. In any event, the claim should not be audited before being passed upon by the Court of Claims. If there is any justice in it, of which I am in grave doubt, that is the proper tribunal to send it to.

LUNACY COMMISSION.

Page 12—lines 19 to 26: 'For the payment of additional compensation to the employees of the various State hospitals from October first, nineteen hundred four, to

October first, nineteen hundred five, in accordance with the schedules contained in the acts amending the insanity law passed by the Legislature of nineteen hundred four, one hundred fifty-seven thousand two hundred seventy-five dollars, or so much thereof as may be necessary.'

The large appropriations which have been made for the year covered by this appropriation seem to me to be ample for all necessary increases in the wage schedule.

PRINTING.

Page 14 — lines 6 to 17: 'For the contractors for the legislative printing for the year nineteen hundred three, for the printing and binding of three thousand sets of the water storage commission, consisting of one volume of the report and one volume of maps, one thousand sets to be delivered to the clerk of the Senate for distribution to the members of the Senate, fifteen hundred sets to be delivered to the clerk of the Assembly to be distributed among the members of the Assembly, and five hundred copies to be delivered to the Secretary of State to be distributed to the various boards of trade and chambers of commerce of the State, at the rate of six dollars per set, eighteen thousand dollars, which shall be paid from the appropriations for legislative printing for the year nineteen hundred three.'

There seems to be no particular necessity for this work at the present time, and it can well afford to wait.

SUPERINTENDENT OF PUBLIC WORKS.

Page 17 — lines 16 to 26: 'For the superintendent of public works for draining the Gorman swamp in Seneca county, by clearing out and lowering the bed of Black brook from a point in the bed of said brook on the east line of the King farm on the Black brook road in the town of Seneca Falls, to and into said swamp, five thousand dollars, or so much thereof as may be necessary; but neither the

appropriating of these monies, nor doing of this work shall be taken or construed as rendering the State responsible for any damage heretofore done, or alleged to have been done, by reason of overflow from said Black Brook, nor as creating any obligation to further improve said Black Brook or drain said swamp.'

The responsibility of the State in this matter is quite doubtful. The item is therefore disapproved.

Page 18—lines 1 to 22: 'For the superintendent of public works fifty thousand dollars, or so much thereof as may be necessary for continuing the work of deepening and improving that portion of the Erie basin at Buffalo, lying between the northerly line of the deep channel of the Buffalo river and the southerly end of the improvement done pursuant to chapter six hundred thirty-five, Laws of eighteen hundred ninety-eight, said point being in the vicinity of slip number two, by enlarging, extending and improving the channel already partially constructed, to a width not exceeding one hundred fifty feet, and to a uniform depth of not less than twenty-two feet below mean lake surface, as established by the United States government, which improvement shall be commenced at the northerly line of the deep channel of the Buffalo river and progress along the channel already partially constructed northeasterly within lines to be established by the State Engineer and Surveyor. The performance of all work provided for by this act shall be by contract secured by proper bond entered into and duly executed by and between the superintendent of public works and the contractor or contractors performing the same, except such portions thereof as in the judgment of the superintendent of public works and the State Engineer and Surveyor cannot be so done to the best interests of the State.'

A similar large appropriation was made last year which was apparently thought sufficient to complete this work.

While it is doubtless desirable that it should be completed, the State's funds are not sufficient to permit an appropriation this year.

RAILROAD COMMISSIONERS.

Page 20—lines 8 to 14: 'For the board of railroad commissioners, to carry into effect the provisions of chapter seven hundred fifty-four, Laws of eighteen hundred ninety-seven, entitled "An act to amend the railroad law and the acts amendatory thereof relative to grade crossings," and the acts amendatory thereof, two hundred thousand dollars, or so much thereof as may be necessary, to be available October first, nineteen hundred five.'

Because of the large appropriations which have already been made for this purpose, and because of the lack of funds upon the part of the State, this item is disapproved."

May 11.

Veto of items in Assembly bill, chap. 726, an appropriation for the Custodial Asylum at Newark.

" Page 1—lines 5 to 6: 'For new direct connected electric light unit, three thousand dollars.'

Page 1—lines 7, 8 and 9: 'For water supply, water tower, piping, connections and water elevating system, including right of way and purchase of spring, ten thousand dollars.'

Page 2—lines 4 and 5: 'For cottage H, twenty-eight thousand dollars.'

The first item is disapproved for the same reason set forth in disapproving a similar item in Assembly bill number 600. [Chap. 720.]

The second item is disapproved because an ample water supply is furnished by the local authorities, and there appears to be no necessity for the purchase of this spring in the establishment of this water system.

The third item is disapproved in view of the fact that a large sum has already been appropriated and is unexpended; and because the trustees have declined to approve the item for cottage H."

May 11.

Veto of items in Assembly bill, chap. 723, an appropriation for the House of Refuge for Women at Hudson.

"Page 1—lines 4 to 6: 'For coal pockets with driveway forming retaining wall to boiler house, five thousand dollars.'

Page 2—lines 2 and 3: 'For repairs and equipment, two thousand five hundred dollars.'

The immediate necessity for these appropriations has not been made apparent to me."

May 11.

Veto of item in Assembly bill, chap. 720, an appropriation for the Women's Relief Corps Home.

"Page 1—lines 4 and 5: 'For one direct connected electric light unit, three thousand dollars.'

One unit is already installed and therefore there appears to be no immediate necessity for this item."

May 11.

Veto of item in Assembly bill, chap. 719, an appropriation for the New York State School for the Blind.

"Page 2—lines 18 to 19. 'For repairs and equipment, one thousand five hundred dollars.'

There seems to be no special reason for this appropriation, as the objects for which it is intended are amply covered by other items."

May 11.

Veto of item in Assembly bill, chap. 721, an appropriation for the Western House of Refuge at Albion.

"Page 1—lines 4, 5 and 6. 'For chapel and assembly hall, with high basement for gymnasium, twelve thousand dollars.'

The immediate necessity for this appropriation has not been made apparent to me. There has been no great increase in the population of this institution, and the accommodations which are afforded at the present time while perhaps not as desirable as those contemplated by this improvement would be, do not seem to make this item very urgent. This and the further fact that there are so many other necessary appropriations to be made for the various institutions, has led me to withhold my approval from this item."

May 11.

Veto of items in Assembly bill, chap. 725, containing various appropriations for the several state prisons, Eastern New York Reformatory and State hospitals for insane criminals and convicts.

"Page 2—lines 2 to 4: 'For boiler plant, forty thousand dollars; for a building for the detention and education of illiterates, forty thousand dollars.'

Page 2—lines 18 to 19: 'For grading grounds, three thousand five hundred dollars.'

Page 2—lines 6 to 7: 'For 200 steel cells, one hundred thousand dollars.'

I am informed by the warden that these items will not be necessary this year, but can be taken care of in a future appropriation in view of the other work that is going on. In view also of the great necessity for appropriations in other directions, these items are therefore disapproved."

May 11.

Veto of items in Assembly bill, chap. 724, an appropriation for the reformatory for women, at Bedford.

"Page 1—lines 4, 5, 6: 'For a direct connected electric light unit, with distributing boards in basement, three thousand five hundred dollars.'

Page 2—lines 4, 5, 6, 7: 'For grading and seeding the embankments in front of the administration building, and about the sewage vaults, one thousand five hundred dollars; for two cottages for inmates, thirty-eight thousand dollars.'

There appears to be no immediate necessity for these appropriations."

May 11.

Veto of items in Assembly bill, chap. 722, an appropriation for the colony for epileptics.

"Page 1—lines 4 to 8: 'Enlargement of central heating and power plant, and conduit from power house to heat the women's group, and for conduits connecting the four cottages on the village green, but not connecting them to the central plant, twenty-two thousand nine hundred and fifty dollars.'

Page 2—lines 7 and 8: 'For repairs and equipment, six thousand dollars.'

There appears to be no immediate necessity for these appropriations."

May 11.

Veto of items in Assembly bill, chap. 727, an appropriation for the State Custodial Asylum at Rome.

"Page 1—lines 4 and 5: 'For employees' cottage to accommodate one hundred, forty thousand dollars.'

Page 2—lines 7 and 8: 'For increased stable facilities, two thousand five hundred dollars.'

Large sums have been appropriated for this institution, which are still unused. The present bill carries also a large item for increased facilities, which, together with the provision that has already been made, will very greatly increase this institution's accommodations.

There is also doubt as to whether the appropriation for a cottage for employees should not be used rather for a new building for the inmates than for the employees.

In view of this and the necessity for large institutional appropriations, which appear to be of more immediate importance, I have concluded to withhold my approval from these items."

May 11.

Veto of Assembly bill granting authority to the East River Gas Company.

"This proposed act has been transmitted to the mayor of the city of New York in pursuance of section two of article 12 of the Constitution, and by him returned duly approved.

I might well rest satisfied with this official sanction of a matter which so vitally and directly interests the people of the great municipality, were it not for the fact that it seems to be so gross a violation of the constitutional and statutory restrictions which have been heretofore passed upon by the people and enacted by the Legislature for the protection of the streets and the vested rights of the citizens of the municipalities of the State. The dissipation by municipalities of privileges which should have been a source of income as well as protection to them, has been the theme and reason for attacks upon the Legislature of the State, and directly led to the incorporation of the home rule principles in our Constitution. The consolidated charter of the city of New York, framed by a commission of its citizens, nonpartisan in character, has placed within the power of the local legislative authority ample means to grant charter

rights under such restrictions as would insure both fair service upon the part of the corporations, and just compensation to the city for the use of such franchises. It is true that power still rests in the Legislature to repeal or amend such sections of the charter as it may desire. That any action, however, which so flagrantly disregards these rights, or the interests of good local self-government is desirable, is a question that is not open to consideration, but one upon which the judgment of the people has been foreclosed. It is certainly within the bounds of reason to conclude that the local authorities are better able to judge of the necessities, the powers to be granted, and the compensation to be exacted from local public and semi-public corporations than is the Legislature of the State. While it is true that from time to time efforts have been made to break down these wise barriers, such attempts have always been met by public criticism that could not be misunderstood.

There are certain phases of this proposed bill which have led me to the conclusion that its enactment into law would be unwise. By its advocates it is claimed that its sole object is to cure a defective title to a grant originally made under somewhat questionable constitutional authority to the Empire Gas Light Company of Long Island City in 1871. No additional authority it is claimed is sought, nor any rights which are not already possessed. While I am inclined to think that these statements are made in good faith, and that perhaps for the time being, or rather by the present owners it is not intended to take the extra territorial privileges, which are apparently granted by this bill, yet when we realize the fact that this law will stand until repealed, if enacted, that the rights conferred are in perpetuity, placing this corporation in a position that would be impregnable, then the suggestion comes to my mind whether we would not in our effort to clear up the title of this franchise in Long Island City, place a cloud upon the title of the people in all the boroughs of the municipality

which would render ineffective and inoperative the provisions of their charter for compensation and limited franchises.

By the act of 1871 certain rights were granted to the Empire Gas Light Company, which rights it is claimed were in perpetuity, and through various conveyances have been vested in the East River Gas Company. In 1892, by legislative enactment, the East River Gas Company was authorized to lay mains and sell gas in the city of New York. The then city of New York is to-day known as the borough of Manhattan and a portion of the borough of the Bronx. If I were satisfied that the effect of the proposed law would be to continue only the rights which had been granted heretofore, then I should not hesitate to give this bill my approval, because I recognize, whether the original act was in the direction of sound governmental policy or not, that it did vest certain rights which no subsequent Legislature, except for the grossest abuse of its powers or failure to perform its functions as a corporation, should interfere with or repeal. But the new section which this bill proposes to add to the act of 1892 is so drawn, it is so intimately connected and associated with the act of 1892, that it cannot be considered apart from it. As a matter of fact it would not be intelligible, nor would it be of the slightest use unless read into that portion of the law of 1892 to which it refers. It would have been easy to have incorporated into this proposed new section a reference to the old city of New York by saying 'in those portions of the boroughs of Manhattan and the Bronx which comprised the territory hereinbefore expressly granted to the said company.' But does it say this, and would the courts give to it this interpretation? It does not say 'in the territory heretofore granted,' but it is 'the territory hereinbefore expressly included,' which is the city of New York. The city of New York in 1892 was but a portion of the city of New York of 1904, and there is such grave danger that the

courts might interpret this proposed bill so as to include the whole five boroughs of the city that I feel in the interest of the public a more specific description should be given as to the extent and scope of the proposed law. And there is no excuse for feigning ignorance on this point, because almost identically the same bill was passed by the Legislature of 1903 and failed to receive the approval of Mayor Low for practically the reasons which I have assigned.

If, therefore, no greater rights were sought, it would have been a comparatively easy matter for those having the bill in charge to have so amended it as to overcome the objections to which I have alluded. I have read with great care the opinion of former Corporation Counsel Rives, who directs attention to these facts. I have also considered the report of the commissioner of gas, electricity and water supply of New York city for 1903, which directs attention to several charters of gas companies in the borough of Brooklyn, which have expired or will expire in the near future. None of these charters, it is claimed are in perpetuity, and grave doubt has been expressed by those who have carefully studied the matter, and for whose intelligence and unbiased judgment I have as much respect as for the distinguished gentlemen who controvert this position, whether this bill does not make perpetual these rights which would otherwise be limited as to term of years. Certainly it is always wise when such questions arise affecting as they do such vast interests, to consider the fact whether this diversity of opinion which exists among laymen may not also extend to the courts which would probably be called upon to pass upon the legality of the act under consideration. That there is widespread and universal distrust of the measure, and that public condemnation as evidenced by the press and thousands of letters which I have received has been aroused, are also reasons why I should give to the protests of the people, not only of the city of New York but of the State, that consideration which is due them.

There should be no further attempts upon the part of the Legislature of this State to interfere with the local management of these matters in any municipality within our borders. If there is not sufficient power lodged in the local legislative bodies of the city of New York to properly meet the question raised by this proposed act, then the Legislature should grant such authority; but no further interference should be attempted in matters so purely of local concern. I have observed that during the past session of the Legislature there has been perhaps to a greater degree than during the three preceding years of my incumbency of the office as governor, a greater disregard upon the part of some of the representatives of the city of New York for the principles of home rule. While the Legislature is personally responsible, yet the facts show that nearly all those measures which seek to bestow valuable rights or to evade the constitutional and statutory provisions for municipal home rule, have had as their sponsors the representatives of the city itself.

Giving all due weight to the honesty of purpose which actuated the mayor in his approval of this measure, and with no desire in any way to impugn his motives, I am of the opinion that in approving this bill he has disregarded every principle of home rule, and has given greater weight and consideration to the appeals of those who are interested in securing the rights bestowed by this bill than to the almost universally expressed public opinion, which must have been known to him as it is to me. It is my opinion that if an honest effort is made to secure a more business-like and equable adjustment of the questions involved in this proposed act as between the municipality of New York and the company which seeks these rights, then a bill that will be fair to both interests, can be prepared and such authority vested in the city under it that will render easy a more satisfactory settlement than can possibly be accomplished under this proposed act. It is better to await such

action than to approve a measure which is so questionable, even though the delay may temporarily prevent the removal to Astoria of plants which are now a menace perhaps to the health and property of the citizens of New York.

In the belief, therefore, that my approval of this measure would be contrary to good judgment, sound policy, and the interests of the people, I have determined to withhold executive approval therefrom."

May 11.

Veto of a Senate bill providing for Supreme Court commissioners.

"This bill was the outgrowth of the recommendations made by the commission appointed to investigate the delays in the administration of justice in the courts of the greater city. All those who were interested in this matter hoped that from the investigation of this commission there would come some certain remedy which would meet the approval of the judges, the bar, and the litigants. The result of their deliberation has been the incorporation of their ideas in various bills, some of which have been approved, and it is to be hoped will result in improvement in the practice of the courts. One of the most important measures is the bill under consideration. It is manifestly evident that such an important measure should have the careful study which has been given to it by the attorney general of the State He has submitted an exhaustive opinion, covering in detail every point in the bill, and has reached the conclusion that it has been drafted in such a faulty manner, and that there are so many provisions open to constitutional objection, that nothing could come from its enactment, except confusion and interference which would be more harmful than the conditions which it seeks to correct. The opinion of the attorney general is coincided

in by many judges, both in and outside of the department affected; and I am therefore led to the conclusion that its approval is both unauthorized and unwise.

I herewith attach, as a part of this memorandum of disapproval, the opinion of the attorney-general.

For the reasons above stated, I have concluded to withhold executive approval."

The following is the Attorney-General's opinion:

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,
ALBANY, *May* 10, 1904.

Memorandum on Senate bill Int. 191, Printed No. 1344, introduced by Mr. Elsberg, entitled "An act to provide for the appointment of Supreme Court commissioners in judicial departments containing counties having a certain population, and providing for the mode of selecting and appointing such Supreme Court commissioners in and for each of said judicial departments, and regulating and prescribing the duties of such commissioners."

This act authorizes "the Appellate Division of the Supreme Court" in the First and Second Departments to appoint "Supreme Court commissioners from the members of the bar of such department of good standing who have been members of the bar of the State for at least five years, and who shall reside within the said department, to the number of not to exceed one commissioner for each one hundred thousand or fraction thereof over forty thousand of the population of said respective counties" (of New York and Kings). (Sec. 1.)

It also authorizes "the Appellate Division of the Supreme Court of the First Department, in its discretion, to appoint not more than five additional commissioners, to be selected from the residents of that department who may be

other than members of the bar, and such commissioners are to be designated by such Appellate Division to act as condemnation commissioners, but not as trial commissioners or chambers commissioners." (Sec. 1.)

The persons so appointed are respectively required to take the constitutional oath of office and thereupon they become respectively a "Supreme Court commissioner." The appointments must be published daily for one week in two newspapers in the judicial department. Two lists of the appointees named by each Appellate Division, duly signed and sealed, must be made; one to be filed in the office of the clerk of the Appellate Division, and the other in the office of the Secretary of State "for transmission to the governor" (sec. 1), who shall have the right within ten days after he shall have received the same to disapprove thereof, in which case the Appellate Division shall make a new appointment in the place of the commissioner whose appointment is disapproved. If the appointment is not disapproved within ten days after its receipt by the Governor, it is then absolute. (Sec. 12.)

It is further provided that all referees hereafter appointed in any action or special proceeding in the Supreme Court in New York or Kings counties and all commissioners of appraisal and assessment in proceedings to condemn real property for public use shall be appointed from among such commissioners and not otherwise, except that parties who have appeared in an action or special proceeding other than an action for divorce, may nominate a referee consented to by all the parties to such action or proceeding to try and determine such action or proceeding, and upon filing such consent the referee named therein may be appointed; his fees, however, must be paid by the parties, while the fees of the Supreme Court commissioner acting as referee are to be paid by the public. (Sec. 2.)

Each Supreme Court commissioner shall receive his traveling expenses and a salary of $10,000 a year, to be paid by

the county within which he is appointed to act. Each commissioner shall sit in places to be designated by the Appellate Division of the Supreme Court of the department within which he is appointed. (Sec. 3.)

Each commissioner shall be entitled to appoint a stenographer at a salary not to exceed $1,500 a year, to be paid by the county in which the commissioner acts. The stenographer is also authorized to charge not more than ten cents a folio for a transcript of his notes. (Sec. 9.)

The commissioner of jurors or the officer or officers designated by law to supply trial jurors is required to supply trial jurors to the trial commissioners holding Trial Terms of the Supreme Court. Except in the First Department, the county clerk or his assistant or deputy is required to attend the sittings of the commissioner in order to take verdicts, keep records "in the same manner as and with the same powers possessed by the clerk of the Supreme Court." (Sec. 10.)

The commissioners appointed from the bar are given power:

"1. To try with or without a jury such action or special proceeding as the parties thereto shall consent to refer to such a commissioner for trial. Upon such trials the Supreme Court commissioner shall possess and exercise all the powers of a justice or judge of the court in which the action or special proceeding is pending.

"2. To hear and determine all or any of the issues arising in all actions or special proceedings which were prior to and at the taking effect of this act referable to referees without consent of the parties and which shall be referred to them by the court, and all interlocutory or other matters so referred, and to hear and determine all questions or issues by this act made referable, either to hear and determine or to take testimony and report thereon, as the case may be.

"3. To perform the duties heretofore performed by commissioners appointed by the Supreme Court to ascertain the compensation to be made therefor when private property shall be taken for any public use within a judicial department to which this act applies or for the use of the city of New York or of any other city located within a judicial department to which this act is applicable." (Sec. 4.)

Immediately after their appointment, the Appellate Division of the Supreme Court is required to divide said commissioners into three classes to be known as follows: "Class A to be known as trial commissioners, Class B to be known as chambers commissioners, and Class C to be known as condemnation commissioners. * * * Except as herein otherwise provided, the Appellate Division may from time to time transfer any of such commissioners from one class to another and the Appellate Division of any department which embraces two or more counties may designate the Supreme Court commissioners to act in one or the other of said counties, the salary of the commissioner to be paid by the county in which he is so designated to act for the period during which he so acts." (Sec. 5.)

It will thus be seen that the number of inhabitants of Kings county determines the number of commissioners to be appointed in that department, but the court is free to select all of the commissioners from any place in the department that it chooses and to assign them to duty in such counties as it pleases within the department, which county, to which they are assigned, must pay this salary and expenses.

It is provided that all the parties who have appeared in an action or special proceeding which is at issue in the Supreme Court may apply to the court at chambers to have the action or proceeding and all the issues therein sent to a Supreme Court commissioner, and that the court shall thereupon make an order transferring the case accordingly. Provision is made for trial by jury before the commissioner

or trial without a jury, if a jury be waived, and the statute provides that "in either case the trial commissioner shall have on such trial the same powers as a justice of the court in which the action is pending with respect to the same, and may impanel a jury, issue subpoenas for the attendance of witnesses, administer oaths, make and enter upon his minutes such incidental orders as may be necessary to the conduct of the trial, set aside verdicts, issue transcripts, and do all other acts that may be done by a justice of the Supreme Court in the trial of an action and shall have the power to punish for contempts committed before him as provided in the Code of Civil Procedure." (Sec. 6.)

A judgment may be entered upon the verdict or decision in the county clerk's office, and the same shall "become the judgment of the Supreme Court for every purpose." (Sec. 6.)

It is further provided that:

"All matters whatsoever which were heretofore subject to compulsory reference or were in any way referable to a referee by the court, except references by the consent of the parties, and all matters, issues and proceedings by this act made referable and which arise in actions or proceedings in the Supreme Court, in any of the counties embraced within the provisions of this act, containing at least seven hundred thousand population, shall be sent by the court when so referred to a Supreme Court commissioner designated to act in the class hereinbefore described as chambers commissioners, and such chambers commissioners shall hear and determine such issues or matters or shall report to the court upon the same as the nature of the case or order of reference may require. The provisions of the preceding section with respect to the entry and effect of judgments shall apply as well to the decisions of such chambers commissioners. Such chambers commissioners shall have the powers heretofore possessed and exercised by referees and in addition thereto the following power:

"1. They shall hear and report upon all motions made for general direction as to all the preliminary relief required by the parties to an action or special proceeding to prepare for trial as provided in the Code of Civil Procedure.

"2. They shall hear and report upon all applications referred to them by the court to inquire into the good faith of any defense or answer moved against as sham as provided in the Code of Civil Procedure, and may on such examination issue subpoena or subpoena *duces tecum* to the defendant, or if the defendant is a corporation to the officers of such corporation, and shall exercise all the powers necessary in the premises." (Sec. 7.)

It is provided that the condemnation commissioners shall constitute "permanent commissioners, for the ascertainment of the compensation to be made for private property taken for any public use within any judicial department to which this act is applicable. Whenever the Supreme Court in any department shall be required to appoint such commissioners to ascertain such compensation, *it shall make such appointment exclusively and solely from among such Supreme Court commissioners,* who shall have been designated by the Appellate Division as such commissioners to such number and in such manner as shall be required by law at the time this act takes effect, except that it shall not be necessary that any of such commissioners be freeholders, or that one or more of them reside within the county in which the property sought to be condemned is located," except only "in case the property is situated outside of the county for a public use in which such property is taken the owner or owners of such property may demand that the value of the same be determined by jury in the county where the property is situated and upon the petition of such owner or owners to that effect, the court shall direct the compensation of the owner to be ascertained by a jury, summoned for the purpose in said county," according to the general provisions of law. (Sec. 8.)

These are the main provisions of the proposed act, which contains other pertinent details.

By this act it is proposed to create an office now unknown to the Constitution and laws of this State. The office of Supreme Court commissioner existed for many years.

March 24, 1801, the Legislature passed an act (chap. 75), entitled "An act concerning the Supreme Court," section 8 of which provided:

"That the recorder of the city of New York shall be *ex officio* a commissioner equally authorized and required with a judge of the Supreme Court, in respect to suits and proceedings in the said court, to do and execute every act, power and trust, excepting taxing costs and signing rolls, which according to the practice of the said court, a judge may do and execute out of court; and also to allow writs of habeas corpus, and to admit prisoners to bail in all cases and in like manner as any such judge may do." (W. & S., vol. 1, p. 316.)

April 10, 1805 (chap. 134), an act was approved entitled "An act to appoint a commissioner to perform certain duties of a judge of the Supreme Court." It was enacted:

"That the person administering the government of this State for the time being, shall, by and with the advice and consent of the council of appointment, appoint some fit and proper person, who shall reside in the county of Oneida, who by virtue of this act, shall be equally authorized and required with a judge of the Supreme Court, in respect to suits and proceedings in the said court, to do and execute every act, power and trust, which, according to the practice of the said court, a judge may do and execute out of court, except signing any judgment, taxing any bill of costs, and the acknowledging of any deed, and also to allow writs of habeas corpus in civil causes, and writs of certiorari, and also to execute the act, entitled 'An act for relief against absconding and absent debtors.'" (W. & S., vol. IV, p. 305.)

The commissioner was authorized to take and receive his fees as commissioner for his services.

Subsequently and at nearly every session of the Legislature until 1846, acts of a similar import were passed authorizing the Governor, first, with the consent of the council and subsequently with the consent of the Senate, to appoint Supreme Court commissioners. (See 1 R. S., 1st ed., pp. 96 to 107; 1 R. S., 3d ed., p. 97 *et seq.;* see, also, 3 R. S., 2d ed., p. 433.)

Reference to the first edition of the Revised Statutes will show that there were twenty-eight commissioners in 1827, while the number had grown to eighty-two in 1846, when the third edition of the Revised Statutes was published.

The commissioners were local officials. So far as I can ascertain none of them was given the power to exercise any *court* function. They were authorized to extend the time to plead (14 Johnson, 443[d]); to take acknowledgments (5 Cowen, 485[e]); to grant a discharge in insolvency proceedings (8 Cowen, 178[f]); to take testimony *de bene esse* (12 Wendell, 105[g]), and similar functions. (See title "Supreme Court Commissioners," Abb. Digest, 1st ed.; Graham's Pr., 2d ed., chap. 2, sec. 2.)

After over forty years of practical experience with Supreme Court Commissioners, the Constitutional Convention of 1846 abolished the office in common with similar positions. Section 8 of article 14 of the Constitution then adopted reads:

"The offices of chancellor * * * vice-chancellor, assistant vice-chancellor * * * *Supreme Court commissioner,* master in chancery, examiner in chancery, are abolished from and after the first Monday of July, one thousand eight hundred and forty-seven."

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[d] Jackson v. Dominick.

[e] Jackson ex dem. Montgomery v. Chapin.

[f] Cunningham v. Bucklin.

[g] Jackson ex dem. Hopkins v. Leek.

Neither of these officers has existed in this State since then.

The Constitution of 1777 did not create a judicial system or department of government. The Supreme Court had previously been created by an act of the Colonial Legislature. (See a very learned opinion of Vann, J., in Matter of Steinway, 159 N. Y., page 256 *et seq.*)

It created a legislative department providing all the details, and an executive department, but it merely recognized the judicial department by prescribing the tenure of office of the chancellor and judges (art. 24), limiting the power of the judges and chancellor to hold other offices (art. 25), providing for the appointment of clerks of courts, attorneys and solicitors and similar provisions. Thus leaving the organization of the courts and their jurisdiction almost completely under the control of the Legislature with the exception of the court for the correction of errors and the trial of impeachments (art. 32).

The Constitution of 1821 explicitly declared that "the legislative power of this State shall be vested in the Senate and Assembly" (art. 1, sec. 1), and that "the executive power shall be vested in the governor" (art. 3, sec. 1), but contained no explicit provision vesting the judicial power in the courts. It provided a court for the trial of impeachments and the correction of errors, and in a measure regulated its procedure. It provided that "the chancellor and justices of the Supreme Court shall hold their offices during good behavior," or until they shall attain the age of 60 years. It directed that the State be divided into a convenient number of circuits, not less than four nor exceeding eight, subject to alteration by the Legislature from time to time, for each of which a circuit judge should be appointed, who shall hold his office by the same tenure as the justices of the Supreme Court and who should possess the powers of a justice of the Supreme Court at chambers, and in the trial of issues joined in the Supreme Court and in courts

of oyer and terminer and gaol delivery and such equity powers as may be vested in said circuit courts or in the county courts or in such other subordinate courts *as the Legislature may by law direct,* subject to the appellate jurisdiction of the chancellor. It prescribed the tenure of office of recorders of cities and for their removal for causes to be stated by the Governor (art. 5). That "the Supreme Court shall consist of a chief justice and two justices, any of whom may hold the court." It provided that "neither the chancellor nor justices of the Supreme Court, nor any circuit judge shall hold any other office or public trust."

It authorized the Governor to nominate, with the consent of the Senate, masters and examiners in chancery and authorized the chancellor to appoint the register and assistant registers. It provided that: "The clerk of the court of Oyer and Terminer and General Sessions of the Peace in and for the City and County of New York shall be appointed by the Court of General Sessions of the Peace in said city."

So that it will be seen that while this Constitution went further toward the organization of a judicial department than did the Constitution of 1777, it still left much power concerning the organization, jurisdiction and procedure to the Legislature.

In the Constitution of 1846, however, as already indicated, a large number of offices concerned in the administration of justice were abolished.

Article 6 of that instrument relates to the judiciary; the first section concerns the power of impeachment. The second section opens by the declaration: "There shall be a Court of Appeals composed of eight judges," and provides for their election and classification.

The next section declares that: "There shall be a Supreme Court having general jurisdiction in law and equity."

The next section provides for the division of the State into judicial districts and the number of justices to be in each.

Section 14 provided that there shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the County Court and perform the duties of the office of surrogate. The County Court shall have such jurisdiction in cases arising in justices' courts and in special cases as the Legislature may prescribe, but shall have no original civil jurisdiction except in such special cases.

The next paragraph provides for a court of sessions to exercise criminal jurisdiction. It then provides:

"Inferior local courts of civil and criminal jurisdiction may be established by the Legislature in cities and such court, except for the cities of New York and Buffalo, shall have an uniform organization and jurisdiction in such cities."

Section 17 provides that the electors of the several towns shall at their annual town meeting elect justices of the peace.

Section 25 provided that the Legislature should provide for the organization of the Court of Appeals and concerning its jurisdiction, and thus, for the first time, a complete judicial structure was organized by the Constitution.

Concerning these provisions it was said by Judge Vann, speaking for the Court of Appeals:

"That article establishes the judiciary of the State the same as previous articles had established the legislative and executive departments of government." (People ex rel. Burby v. Howland, 155 N. Y. 275.)

After nearly half a century of experience under the Constitution of 1846, with the advantages of investigations and discussions of constitutional measures of that period, and

with the necessity before their eyes of creating a complete and adequate judicial system for the State, the Convention of 1894 met.

Article 6 of this Constitution creates and provides for a complete judicial department of government.

Section 13 provides for the trial of impeachments.

The article provides for the continuance of the Court of Appeals, and prescribes how it shall be constituted, prescribes its jurisdiction and for filling vacancies. It provides that:

"The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law and not inconsistent with this article."

It provided that the Supreme Court should consist of the justices then in office and of the justices of city courts which were abolished, who, by operation of the Constitution, were transferred to and made justices of the Supreme Court. It provided for Trial and Special Terms of the Supreme Court and an appellate department thereof. It increased the number of justices from forty-six to seventy-six. It abolished the city courts of higher jurisdiction, the courts of oyer and terminer, the courts of sessions (except in the county of New York) and circuit courts, and concentrated the jurisdiction of all these courts, except the courts of sessions, in the Supreme Court. It provided for the county courts, surrogates' courts, courts of justices of the peace and district courts of cities and authorized the Legislature to organize inferior local courts of civil and criminal jurisdiction, but restricted the power of the Legislature in this particular, and provided that no inferior court should be a court of record, or exercise equity jurisdiction or common law jurisdiction in a case involving over $2,000.

There are, then, created by this Constitution, courts of civil and criminal jurisdiction, ranging from the lowest city court to the highest court known to our history.

As to the judges of the Court of Appeals and the justices of the Supreme Court, the county judges, the surrogates and justices of the peace, it is explicitly provided in the Constitution that they are to be elected by the people. There is also an express provision that judicial officers in cities whose election or appointment is not otherwise provided for in article 6 of the Constitution, shall be chosen by the electors of such cities or appointed by some local authorities thereof. (Art. 6, sec. 17.)

At the conclusion of section 18 of article 6, which authorizes the creation of inferior local courts, is this sentence:

"Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct."

It is "otherwise provided" in the Constitution that the judges of every court from the Court of Appeals to local inferior courts in cities, shall be chosen by election or appointed by some local authorities of cities, and the only courts to which this sentence can refer are courts in villages and towns.

The courts have always recognized a difference between the powers and functions of judges as such and the powers and functions of a court. (Matter of Davies, 168 N. Y., 102; Nash v. People, etc., 36 N. Y., 607.)

It has at times been deemed expedient and wise to provide for the exercise of a judge's powers by judicial officers other than Supreme Court judges (Renard v. Hargous, 13 N. Y., 259; Hayner v. James, 17 N. Y., 316; People, etc., v. Hurlbutt, 44 Barbour, 126; Cashman v. Johnson, 4 Abb. Pr. Reps., 256).

In the Constitution of 1846 this provision was inserted:

"The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county to discharge the duties of county judge and of surrogate, in case of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law" (art. 6, sec. 15).

In the Constitution of 1894 this provision has been retained and reads as follows:

"The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law" (art. 6, sec. 16).

It has been held that officers elected under this provision could exercise the functions formerly exercised by Supreme Court Commissioners and the functions of a Supreme Court judge at Chambers (Thrasher v. Bentley, 1 Abb. N. C., 39, and 59 N. Y., 649; Seymour v. Mercer, 13 Howard, 564; People, etc., v. Maine, 20 N. Y., 434; Kinney v. Roberts, 26 Hun, 166).

It appears, then, that while there is no express expression of intention to create a judicial department of our government, and to vest the judicial power of the State in it, embodied in the Constitution, that this has been actually accomplished. The intention is expressed in deeds rather than in words and is quite as effective in results, as has been held by the courts (People ex rel. Burby v. Howland, 155 N. Y., 275).

This examination of the constitutional judicial history of our State discloses a continuously growing desire of the people, born of experience, (1) that the permanent officers concerned in the administration of justice shall be elected by the people; (2) to decrease the number of courts and officers concerned in the administration of the judicial department of the government—the Court of Chancery with its chancellor, vice-chancellors, assistants to vice-chancellors, registers, examiners and masters in chancery and Supreme Court commissioners were all abolished in 1846. The city courts of higher jurisdiction, the circuit courts, the courts of general sessions of each county (except in the

county of New York), were abolished in 1894, and the number of justices of the Supreme Court was increased from forty-six to seventy-six in the expectation that these justices, as the only permanent judicial officers of the only court of general jurisdiction, could do the work which would come to that court; (3) to simplify procedure.

The provisions of the bill in question offend against each of these principles, and a bill which violates the spirit of the Constitution is as much unauthorized as one which violates its letter (People ex rel. Bolton v. Albertson, 55 N. Y., 55; People ex rel. Burby v. Howland, 155 N. Y., 280, 281).

The Constitution having provided for officers to exercise the functions of judges out of court (art. 6, sec. 16, infra), specified their number, required the application of the board of supervisors as a condition precedent to the authority of the Legislature to act in the matter, and directed that they be elected, this method is conclusive. The Legislature has no more authority to provide for more than two, or that they shall be appointed, and to do it without the application of the board of supervisors, than it has to authorize the appointment of additional justices of the Supreme Court. For "*expressio unius est exclusio alterius*" (Sill v. Village of Corning, 15 N. Y., 300).

The officers mentioned in the act in question cannot be created on the authority on which referees, commissioners in condemnation proceedings, committees of the person and estate of lunatics and other incompetent persons, receivers of property in the custody of the court and similar agencies, are employed. These are not permanent officials. They are the agents of the court employed by it temporarily in the course of an action or special proceeding as occasion may require (Matter of Hathaway, 71 N. Y., at p. 239). The employment of any of these is as much a judicial act in the trial as the determination of a disputed question of law or fact. It involves two inquiries:

First, shall the appointment be made; second, who is the proper person to appoint? On each of these questions the

party to be affected is entitled to be heard. If he is not heard he is deprived of due process of law. One might be suitable to act in one cause, but utterly unfit to act in another. It is important to ascertain and judge of the qualities of a person when named for appointment, in each instance. We might, with much propriety and right, provide that the Appellate Division designate permanent jurors as permanent referees or commissioners of appraisal, and any law which deprives the court having jurisdiction in the trial of a case or special proceeding of any judicial function involved in the trial, is an encroachment upon the judicial power, and void.

"Where assistants are necessary to enable judges to discharge their judicial functions, the power to choose such assistants resides in the court."

This quotation is from the headnote of a decision of the Supreme Court of Indiana (State ex rel. Hovey v. Noble, 118 Ind., 350), which adjudged null and void an act very similar to the one now under consideration. The opinion is written by Chief Justice Elliott of that court, and is exceedingly learned and exhaustive. (See, also, Standfast v. Crotty, 37 State Rep., 673; Menges v. City of Albany, 47 How. Pr., 244; affirmed 56 N. Y., 374; People ex rel. Eckerson v. Trustees, 151 N. Y., 84; Matter of N. Y. C. & H. R. R. R., 64 N. Y., 60; De Hart v. Hatch, 3 Hun, 375; People ex rel. The Mayor v. Nichols, 79 N. Y., 589, 590; Alexander v. Bennett, 60 N. Y., 205.)

If it be contended that the act merely creates a list of eligible persons from which the trial court may choose, I am of the opinion that an act limiting the trial court in the selection of referees and commissioners of appraisal to one person in an hundred thousand, so unreasonably narrows the power of the selection as to unduly encroach upon the functions of the court (People ex rel. Killeen v. Angle, 109 N. Y., 564; People ex rel. Balcom v. Mosher, 163 N. Y., 32).

That the commissioners which this act proposes to create

are public officers must be conceded (Matter of Hathaway, 71 N. Y., 238). They have a permanent tenure of office; they are paid a salary by the public; they take the constitutional oath of office.

I am clearly of the opinion that the attempt of the Legislature to confer upon the *court* the power to select public officers is unauthorized.

The policy of excluding the courts from participation in the struggles for official spoils was approved by the people of this State many years ago, and found expression in the Constitution, and has been steadfastly maintained (Constitution of 1777, art. 25; Constitution of 1821, art. 5, sec. 7; Constitution of 1846, art. 6, sec. 8; Constitution of 1894, art. 6, sec. 10), and has been recognized by the courts (People ex rel. Decker v. Waters, 4 Misc. Reps., 1, and cases there cited; Matter of Gilroy, 11 App. Div., 65).

It is worthy of note here that the Constitutional Convention of 1894 deemed it necessary to expressly confer power upon the Appellate Division to appoint and remove a reporter (art. 6, sec. 2, last sentence), and a clerk (art. 6, sec. 19). That this power is expressly conferred indicates a belief of the framers of the Constitution that the power to appoint to public office in general does not reside in the court, and cannot be conferred upon it by the Legislature.

I am aware of decisions sustaining statutes which confer upon the *justices* or judges of the court the power to select officers connected with the administration of justice (Matter of Allison v. Welde, 172 N. Y., 421; People, etc., v. Hall, 169 N. Y., 194–195). But the principle on which these decisions rest is stated by Judge Vann as follows:

"While the performance of administrative duties cannot be imposed by the Legislature upon the Supreme Court as such, except as to matters incidental to the exercise of judicial powers, yet for many years and without serious question acts have been passed conferring upon the justices of that court authority out of court to perform a variety of

functions administrative or semi-administrative in character, such as the approval of certificates of incorporation, the acknowledgment of conveyances, the solemnization of marriages, the appointment of commissioners of jurors, the investigation of the financial affairs of villages and the like" (Matter of Davies, 168 N. Y., 102).

In this case, however, the selection of the public officers is not conferred upon the *justices,* but is conferred upon the *Appellate Division of the Supreme Court.*

I believe, also, that the provision of this act, which assumes to authorize the parties to an action or special proceeding to create a tribunal where a referee shall preside at a *jury trial* and possess and exercise the powers of a justice of the Supreme Court, is unauthorized and void (French v. Merrill, 27 App. Div., 612; Austin v. Searing, 16 N. Y., 112; Kelsey v. Forsyth, 21 Howard [U. S.], 85; The Lucy, 8 Wallace, 307).

The Constitution provides for a Trial Term of the Supreme Court. It also provides that there shall be a Governor. If it be conceded that the Legislature may authorize citizens of the State who desire to invoke the powers of the Trial Term of the Supreme Court to create an institution in a manner to be prescribed by the Legislature to exercise these powers, how can it be denied that the Legislature may authorize the designation of "executive commissioners" and may provide that persons who desire to have a bill which has been passed by the Legislature approved, or a convict granted a pardon, and those who are opposed to either may agree in writing that an "executive commissioner" shall hear and decide the controversy and exercise all the powers of the Governor of the State in the matter?

If the Legislature may duplicate one constitutional office, why not another? The public policy involved in each instance is the same. The people are certainly as deeply interested in the manner in which the law shall be inter-

preted and applied in the transactions of mankind as they are in any other function of government, and when they have provided in the Constitution that there shall be a court or an officer to exercise a particular function of government, this court or this officer must be regarded as possessing the functions or powers of the office exclusively, and it is not in the power of the Legislature, a mere agency of the people created by the Constitution, to transfer these functions. If we concede that the Legislature may redistribute the powers of government and provide that they may be exercised otherwise than by the officers and bodies which the Constitution provides, then the Constitution has no binding force or authority, and legislative power is unlimited.

The authority for referring one or all of the issues in a case to a referee, either by the consent of the parties, or without their consent, on the motion of the court, as the same has been practiced during the entire history of the State and regulated by the Legislature, will not support this bill, as will appear by a brief examination of the history of that practice.

Before the Constitution of 1821, and while the organization of courts and the defining of their jurisdiction was vested in the Colonial and State Legislature with practically no limitations, acts had been passed authorizing the reference of all the issues in an action in cases involving a long account or difficult questions of law, to one or more referees to hear, try and determine. It was the practice of the Court of Chancery to refer the taking of testimony or the stating of an account or other similar function arising incidentally in the course of a suit, to a master.

Each of our constitutions has adopted the laws of England and of the colony of New York as they existed before the organization of the State, subject to the power of the Legislature to alter or repeal them (Constitution of 1777, art. 35; Constitution of 1821, art. 7, sec. 13; Constitution of 1846, art. 1, sec. 17; Constitution of 1894, art. 1, sec. 16).

This practice of referring cases has never been abandoned or discontinued in this State by legislation; consequently, it has constitutional warrant (Graham's Pr., 2d ed., chap. XI; Boyce on Referees, pp. 1 to 7; Steck v. Colorado Fuel & Iron Co., 142 N. Y., 236; Magowan v. Sinclair, 5 Daly, 63); but at no time in the history of the colony nor of the State, so far as I have been able to discover, has the practice prevailed of designating a referee to impanel a jury and preside at a jury trial.

I have no doubt that the parties to an action or proceeding at issue might consent to refer the same to one of the commissioners who may be appointed if this act is approved, and that such commissioner would have power to hear and determine the cause under such stipulation, not because of this act, however, but entirely because of the present law of the State.

The court before which a case may be pending which involves a long account or a difficult question of law, and which may be referred by the court of its own motion, without the consent of the parties, might refer it to one of these commissioners in its discretion, and the order would be valid, but that part of the bill which assumes to compel the court to refer the case to one of these commissioners, even though the court might deem him incompetent, or for any reason an improper person, is, in my opinion, an unauthorized encroachment upon the judicial authority of the Supreme Court.

There are some features of the system which this bill attempts to create which undoubtedly, standing by themselves, would have vitality and legal force, but the illegal provisions constitute such essential features of the entire scheme as, in my opinion, utterly destroy it.

I am clearly of the opinion that even with executive approval this bill would be absolutely void.

Respectfully submitted,

JOHN CUNNEEN,

Attorney-General.

May 11.

Memorandum filed with Assembly bill, chap. 718, establishing a training school for boys. Approved.

"This bill was sent through error to the mayor of the city of New York, because of a vague provision that whatever title the State has in the property at Randall's Island, may be affected by the proposed commission which has for its purpose an inquiry into the propriety of removing the institution at Randall's Island to a rural community. It is proposed that the State take absolute charge of this new asylum and erect one similar in character to the industrial school at Rochester. I cannot see why, therefore, under any consideration, the city of New York has any interest except the interest which was stated at the time of the appointment of this commission was under consideration, which was that in view of the relinquishment by the State of its doubtful title to the property, the city might devote the island to park purposes.

The approval or disapproval of this particular section of the bill by the mayor, does not vitiate in any degree the result which was sought to be accomplished by the appointment of this commission. Believing, therefore, that the bill is not a city bill, under section two of article twelve of the Constitution, I have concluded to disregard the disapproval of the mayor, and give it my sanction."

May 11.

Memorandum approving Assembly bill, chap. 731, the State tax rate.

"In approving Assembly bill number 2070, entitled 'An act for the support of government,' the legislative work of 1904 is completed.

Again the tax rate of thirteen one-hundredths of a mill, a merely nominal tax made necessary by the Constitution, is the only direct burden for State purposes upon the lands, the homes and the factories of the State.

The total appropriations made were.....	$28,296,523 82
The total approved by me were.....	26,041,200 33
Total of items disallowed.....	2,255,323 49
The appropriations made and allowed by the preceding Legislature, to wit, that of 1903, were	23,587,947 77
Or an increase over approved appropriations of 1904 of.....	2,453,252 23

When we explain this apparent increase in the greater appropriation for good roads of $900,000; for grade crossings of $75,000; for common schools of $368,548; for the purchase of Adirondack land of $250,000; of the greater necessity for rebates in the Excise Department because of the change in law which makes the State's share one-half instead of one-third, and which calls for $350,000 more the present year, we explain in part the reason for greater appropriations.

Prisons, through the failure of passage of one of its appropriation bills by the Legislature of 1903, made necessary in part the expenditure of $432,219.37 more during the current and coming fiscal years. The establishment of a college of agriculture called for $250,000. The National Guard, the Supreme Court and the Lunacy Commission required $844,158.51 additional. These items make up a grand total of $2,869,925.98. In the care of State charitable institutions, asylums for the blind, it will be seen that explanation is given for necessary increases which more than offset the greater appropriations alluded to. With the expenditures have come greater efficiency, better discipline, and more satisfactory results in every department of the State. Nor are these the only results secured. There will remain in the State treasury by the estimate of the Comptroller, $6,000,000, after all appropriations are provided for. This will make certain, with the same care which has been exercised by the Legislature of the past

three years, the continuance of a policy relying upon indirect revenues for the ordinary expenses of government. This record is of itself worthy of the commendation of the people of the State. Nor is this alone the record of the Legislature of 1904. Its acts, while not of so general a character as of its immediate predecessors, are still of such a character as to be worthy of approval. The unification of the school system, enlargement of home rule provisions, the extension of State aid in good road building, and the preparation for the abolition of dangerous grade crossings, are all in the interest of the people. No interest has been neglected, nor has any right been disturbed. With this record, I am sure that the individual members deserve, and they undoubtedly will receive, the approval of the people of the State."

May 12. The following city bills were not returned to the Governor within the time specified in the Constitution (Article 12, sec. 2), and could not for that reason be acted upon by him:

Senate bill number 939, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' and the acts amendatory thereof and supplementary thereto, in relation to filling vacancies in elective offices."

Senate bill number 1025, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' and the several acts amendatory thereto, in relation to taxes and assessments."

Senate bill number 428, entitled "An act to authorize the city of Buffalo to issue its bonds for the purpose of raising money to construct, maintain, extend, repair and regulate water works."

Senate bill number 1104, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-

one, entitled 'An act to revise the charter of the city of Buffalo,' and the several acts amendatory thereof and supplementary thereto, in relation to the annual assessment rolls."

Senate bill number 902, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' and the several acts amendatory thereof and supplementary thereto, in relation to taxes and assessments."

Senate bill number 879, entitled "An act to amend section fifty-three of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety-five, as amended by chapter one hundred and ninety-nine, laws of eighteen hundred and ninety-eight, and by chapter two hundred and eighty-nine, laws of eighteen hundred and ninety-nine, and by chapter two hundred and seventy-one, laws of nineteen hundred and two, relative to the annual tax levy in the city of Little Falls."

Senate bill number 694, entitled "An act to amend section three of chapter five hundred and forty-six of the laws of eighteen hundred and seventy-four, entitled 'An act to provide for the safe keeping of the money raised for the payment of town expenses in the city of Utica,' as amended by chapter five hundred and three of the laws of eighteen hundred and eighty-four, chapter eight hundred and thirty of the laws of eighteen hundred and ninety-five and by chapter four hundred and eleven of the laws of nineteen hundred and one."

May 14.

Veto of an Assembly bill, concerning the Niagara, Lockport and Ontario Power Company.

"In 1894 the Legislature of the State gave to the Niagara, Lockport and Ontario Power Company a charter which permitted it to take water from the Niagara river, at a point about twelve miles above Niagara Falls, for the purpose of furnishing pure and wholesome water for domestic purposes to the city of Lockport, as well as to generate

and sell electricity in the counties of Niagara, Orleans and Erie. The time in which this work was to be commenced has about elapsed without advantage having been taken of the valuable rights which were conferred in the original act. It has been claimed that the restricted use and territory which the original act granted were not sufficiently attractive to induce capital to invest in the enterprise.

The bill now before me eliminates the water supply provision and seeks to make of it a company whose principal purpose is to sell both hydraulic and electrical power. To compensate the company for the loss of the power of condemnation which it had by reason of its being a water company, this bill seeks to confer privileges of the broadest character. Its territory is no longer restricted to the three counties named in the law of 1894, but it is given the right to operate anywhere within the State of New York. But few restrictions are placed upon it, and the State, if this bill should become a law, would have given away that which belongs to the people without in any way exacting compensation, or throwing around it such safeguards as would secure such service as might be desired by the users of power and electricity throughout the State. It is true that almost as broad charters have been given heretofore to other companies. It is also a fact that no compensation has been exacted from companies now enjoying practically the same privileges which are sought to be conferred by the bill under consideration. Competition is always desirable, provided that it may not be of temporary advantage alone but that it should always be within the reach of those who are affected. There is nothing in the bill which would prohibit the sale of this charter to a competing company, and therefore the competition which it is claimed would result from the installation of the plant which would follow the creation of a new power company is not properly assured to the people. Therefore the plea that has been made that this bill is necessary for the development of

the western part of the State does not appeal with that force that it would otherwise. With these restrictions imposed we could see where advantage would follow to the manufacturing interests of the commonwealth; without them, the benefits are problematical.

The plea that other corporations are enjoying similar privileges to those which this bill seeks to bestow is no justification for the continuance of policies which dissipate the rights of either the State or the municipalities. That governmental policy which does not respect the expressed will of our citizens in relation to both safeguarding their rights and exacting compensation for them, is sure to meet with just criticism and disapproval. That these privileges are valuable is beyond question, and that the State has the right to demand a proper recompense for them, therefore, should never be lost sight of. That this proposed act does not take cognizance of these facts makes it, in my mind, undesirable legislation.

There is another strong reason which has been urged against approval of this bill — a protest which is not confined to the State of New York only, but which has come to me from all over the Union. Our State has expended large sums of money in protecting and beautifying the surroundings of the Falls. Niagara has been and is still the Mecca of all those who delight in scenic beauty and wonders. Thousands of people from all over the world annually visit it, and among those who are actuated, perhaps, largely by sentimental reasons there has arisen the fear that the constant inroads that are being made upon it under charters heretofore granted may result eventually in its destruction. True it is that engineering skill has established to its satisfaction the conclusion that this proposed company would not materially injure the beauty of the Falls. On that question there is a serious difference of opinion. If the result, however, would be less harmful than those who seek for the preservation of the Falls be-

lieve, it certainly would lead, or rather be an excuse for other companies that would in time produce the results which are feared. I am of the opinion that however much we may discount and deprecate the interference of the sentimental with the practical in life, that we cannot get away from the fact that this sentiment is not one of retrogression, out of constant progression in civilized life. There is due to it, therefore, the same consideration which should be given to all practical affairs of life. This seems to me to be a second and fully as important a reason for objection to approval of this measure.

True it is that there will come disappointment to the immediate locality which may be affected by the disapproval of the proposed law, but I am satisfied that outside of the immediate environment of the city which expects to be most benefited, there is almost universal public disapproval of it.

The Legislature should protect the Falls rather than increase the menace to which I have referred, by restricting those corporations which are already in possession by compelling the removal of obstructions and unsightly structures which mar the beauty of Niagara.

To the arguments advanced by those who are favorable to the enactment of this bill, I have given due weight and consideration. I have endeavored to view them from an unbiased and unprejudiced standpoint and have reached the conclusion to disapprove this measure because I believe it to be contrary to the best interests of the State and contrary to the expressed will and wishes of the vast majority of our citizens."

May 14.

Memorandum filed with Senate bill, chap. 749, regarding rights of riparian owners. Approved.

" This bill seeks to prevent interference with the operation of mills situated on the banks of the Hudson river.

Under existing law the ice which forms upon the Hudson river is vested in riparian owners. By an interpretation of the law by Mr. Justice Betts, a writ of injunction was issued which practically prevented the operation of a certain cement mill during the formation of the ice upon the river. This bill adds an amendment to the act of 1895, which provides that riparian owners may pursue their business in a lawful manner. Presumably, therefore, any illegal act upon their part would make them liable for damages to the owners of any property affected. 'Lawful manner' means using your property so as not to interfere with the rights of your neighbor. Ice being property, any damage done to it which would render it useless, would make that riparian owner who is responsible for the injury, liable for such damages as might be inflicted. It seems to me, therefore, that no rights are affected unjustly by this act, and for this reason I have concluded to give the measure my approval."

May 14.

Veto of acts relating to the civil service.

"The following bills relating to the city of New York did not receive executive approval for the reasons hereinafter stated:

Senate bill No. 339, entitled 'An act authorizing the board of estimate and apportionment of the city of New York to take proof of the claim of Matthew M. Feely for work, labor and services and disbursements alleged to have been performed and made as assistant to expert accountants in the office of the comptroller of the city of New York, and to allow said board to pay said claim.'

Senate bill No. 577, entitled 'An act to authorize the payment of the claim of James A. Russell for services rendered the city of New York.'

Assembly bill No. 1294, entitled 'An act authorizing and directing the board of estimate and apportionment of the city of New York, in its discretion to audit and allow, and also authorizing and directing the comptroller of the city of New York to pay to James C. Daly compensation for services rendered to the city of New York as superintendent of sections in the department of docks and ferries of said city.'

Assembly bill No. 1341, entitled 'An act authorizing the comptroller of the city of New York to inquire into the alleged claim of Charles J. O'Neil, an assistant clerk in the municipal court of the city of New York, first district, borough of Brooklyn, for services claimed to have been rendered to the city of New York, as such assistant clerk, from the first of February, eighteen hundred and ninety-eight, to the thirtieth day of September, eighteen hundred and ninety-nine, both days inclusive.'

Assembly bill No. 942 (Senate reprint No. 1213), entitled 'An act authorizing the board of estimate and apportionment of the city of New York to audit and allow and also authorizing the comptroller of the city of New York to pay to Valentine M. Collins compensation for services actually rendered in the city of New York in the department of education in the years eighteen hundred and ninety-nine and nineteen hundred pending the preparation of municipal civil service eligible lists for the position of supervisor of truancy in said department.'

I understand that this employment was in violation of the Civil Service law, and was with the full knowledge of the consequences. The claims therefore should not be given consideration, or the effect of legislative enactment. The Civil Service laws should be lived up to, and the Legislature should not interfere with what was manifestly improper employment."

May 14.

Memorandum filed with Assembly bill, chap. 752, in relation to water rights in Dutchess county. Approved.

"Under the charter of the consolidated city of New York that municipality has the right to go into any section

of the State, or to make leases or purchases in adjoining states for the purpose of securing an adequate supply of water for domestic or other purposes. Subsequent to the enactment of this charter an exception was made to its operation in the county of Suffolk, and that county is now absolutely exempt from the operations of the chartered law so far as obtaining a water supply for the greater city is concerned. It was because of the fear that the drainage of water would interfere with the proper moisture of the soil and cultivation of the farmers that this measure was enacted. Assembly bill number 900, entitled 'An act to amend the general municipal law in relation to the acquisition of water rights,' seeks now to exempt the county of Dutchess from its operations.

There is nothing so necessary nor should any obstacle or captious opposition be permitted to interfere with the proper exercise of the rights granted, both under general and special laws to the city of New York, so far as the question of water is concerned. The situation which is presented is peculiar in many respects. The water sheds which are affected by this act are largely devoted to manufacturing and upon the operation of the mills situated therein depends the prosperity and the employment of its inhabitants. Nowhere else along the line of the proposed enlargement of water supply are similar conditions presented. It is peculiarly a manufacturing section, one in which the State is bound to exercise every care and to protect and encourage. Necessary precautions have been taken in other states, particularly in the State of Massachusetts where similar conditions existed for the protection of such industries. It was required there that reservoirs should be built so that while furnishing water for domestic purposes, there should be no lack of it for the manufacturing establishments which were situated along the streams thus made use of. I am satisfied from reports that have been made by the engineers who have conducted

investigations in the water sheds of Dutchess county, that the same safeguards can be secured for the manufacturing interests there. A peculiar situation, however, has arisen which in all fairness, not only to the people of New York city, but of the entire State, should not be permitted. The savings banks in Dutchess county by report made to me, duly authenticated, have loaned upon property of the operatives and residents who are immediately affected by the proposed extension of New York's water supply to this section, over three millions of dollars. Were it not for the fact that the Constitution, or rather a decision by the highest court,* makes it impossible, even if the city should desire to do so, for it to compensate in any way for property not actually taken, the situation as it exists today might well be left to the ordinary operation of the law. The mere authority, however, conferred in the city's charter, and preliminary surveys and plans which have been approved here made certain condemnation proceedings of the rights which are to be actually taken, menacing thereby and making insecure the loans that have been made on property which would be affected without being actually taken for the city's use. This of course would make certain a demand for their payment. This condition is not overstated, nor are we obliged to go outside the borders of Dutchess county itself for a demonstration of what will follow the destruction of this property in the necessary operations of the greater city. Glenham, a small village within this water shed, formerly the property of A. T. Stewart, for many years gave employment to hundreds of people. During all of the years which this mill was in operation, prudent and apparently safe investments were made in homes for its operators. During the past

* See Drake v. Hudson River R. Co. (1849) 7 Barb. 508; Fobes v. Rome Watertown & Ogdensburg R. R. Co. (1890) 121 N. Y. 505.

fifteen years or so this mill has been idle and the property has so shrunken in value that it is neither available for rental purposes, nor can its owners secure loans upon it either from savings banks or individuals. It is a deserted village, and the same fate awaits thriving communities of many thousands of inhabitants should the waters be diverted which now furnish power and are made use of for other purposes.

I am fully aware of the fact that the needs of the great municipality at the mouth of the Hudson are of greater importance, perhaps so far as numbers go, than any small community within the State. And were I satisfied that even this great loss were necessary in the interests of the people of the city of New York, I should not hesitate to disapprove this bill, nor do I believe there would be any difference of opinion anywhere as to the necessity of contributing to the health and the comfort of the citizens of New York city. But there seems to be no immediate necessity for this improvement. True it is that the engineers estimate that within the next seven or eight years there will be a demand for the utilization of this water shed. There can be no objection, however, to such use, provided the ideas and the intentions of the engineers are incorporated as a part of the law, thus making a certainty of what is now but a vague promise, and thus remove all fear in the minds of those who are most directly interested in the water sheds of Dutchess county. But why, it may be said, not allow this work to proceed under existing law and await action by the next Legislature? The answer to this query is that in the meantime it will inflict unnecessary hardship and sacrifices which should not be tolerated because they are unnecessary.

There has been much talk of the Ramapo Water Company through this measure menacing the interests of the citizens of New York. It will be remembered perhaps that

among my first official acts in 1901 was my approval of a bill which repealed the extraordinary privileges and powers which had been granted to this company. It now possesses no more power and no greater rights than an individual. Its rights are not pre-eminent, and they can be condemned and made use of by the city, if there are any rights existing, of which I have grave doubt, in the same manner and following the same procedure as would apply in any other condemnation proceeding. Of this there certainly can be no doubt, because the improvements proposed to be made under the authority and sanction of a former administration, that of Mayor Low, are in the very territory which it is now claimed is a part of the original Ramapo territory. Nothing therefore is gained or lost by this bill so far as the Ramapo Company is concerned. The same rights will be in existence after my signature as existed before. But the bill guarantees until a future session of the Legislature, however, such immunity as will secure, not as a matter of favor, but as an absolute right, concessions which are promised, but for which there is no present guarantee, and will enable the city of New York to secure even this water shed if it contents itself with what it claims to be its desire for surplusage only.

I am constrained, therefore, to believe that the bill is wise in so far as it safeguards private interests, and by these interests I mean not those of corporations, but of the humble home dweller, who has perhaps all of his savings invested in a home, representing in many cases the result of years of toil. In giving my approval, therefore, to this measure, I do so with no other object in view than this, and reserve such authority as is in me vested to convene the Legislature in extra session* if the citizens of New York so desire, in order to permit the framing of a measure that will accomplish the object of securing an

* Const. 1894, Art. 4, § 4.

additional water supply to the city of New York, as well as protection of vested rights, which I feel bound to do in giving this measure my approval."

May 14. The following bills did not receive executive approval for the reasons hereinafter set forth:

Senate bill number 1132, entitled "An act to provide for the appointment of a permanent commission to supervise, direct and control the educational and industrial interests of the adult blind of the state of New York, and to make appropriations to meet the expenses of such commission."

"This bill provides for the creation of a new commission to direct and control the educational and industrial interests of the adult blind of the state of New York. I am unable to discern the necessity for this proposed act, because the state is making ample provision in every respect for the education of the blind, and ample provisions exist in every locality for their proper care. It seems to me that this bill is unnecessary, and would lead to demands upon the state which are not contemplated by its framers —demands which the state should not make itself liable to. When the state provides proper facilities for the education of the blind in case of their infirmity, or as objects of charity, and is extending to them the education to which they are entitled and which every other child receives, it seems to me that it has fully met the duty which is imposed upon it."

Senate bill number 769, entitled "An act authorizing the repair and protection by retaining walls or otherwise of the Ulster-Delaware road number sixteen in the town of Shandaken, Ulster county, and making an appropriation therefor."

This bill is disapproved because there is no responsibility on the part of the state to undertake this work.

Senate bill number 1154, entitled "An act authorizing the construction of a bridge over the Seneca river at Cold Spring, connecting the towns of Salina and Lysander in the county of Onondaga, and making an appropriation therefor."

There is no immediate necessity for this work. In addition, the bill has not received the approval of the superintendent of public works.

Senate bill number 836, entitled "An act making an appropriation for the payment of an assessment upon the lands of the Rochester state hospital for the improvement of South avenue in the city of Rochester."

I am of the opinion that there is no liability upon the part of the state for the assessment which this bill provides for, and that the state should not be made liable for the improvement in question.

Assembly bill number 913, entitled "An act making an appropriation for contributing to the expense of erecting a monument to the memory of General James Clinton, at a point on the line of march of his troops from the Mohawk river to Otsego lake in June, seventeen hundred and seventy-nine."

This appropriation is disapproved owing to the necessity for large appropriations this year which are of a more urgent nature than this item.

Assembly bill number 390, entitled "An act making an appropriation for further construction at the Eastern New York reformatory."

There is an urgent lack of necessity for the work contemplated by this proposed act. In view of this fact, and also of the fact that ample appropriations have been made to this department, it does not seem to require approval.

Assembly bill number 612, entitled "An act to provide for the erection of a monument in commemoration of the battle of White Plains."

This bill is disapproved because of lack of available funds.

Assembly bill number 1291, entitled "An act providing for the construction of approaches to Quaker bridge over Allegany river in the town of Elko, county of Cattaraugus, and making an appropriation therefor."

This bill is disapproved because there is no liability upon the part of the state to undertake this work.

Assembly bill number 122, entitled "An act making an appropriation for drainage in the northern part of the town of Amherst, and in the town of Clarence, in the county of Erie, by deepening the channels of the creeks and ditches that flow into the Tonawanda and Ellicott creeks in said town of Amherst."

This bill is disapproved because there is no liability upon the part of the state to undertake this work.

Assembly bill number 1940, entitled "An act to provide for the drainage of Gorman swamp in Seneca county and making an appropriation therefor."

This bill is disapproved because there is no liability upon the part of the state to undertake this work.

Assembly bill number 1881, entitled "An act authorizing the construction of a bridge over the Erie canal at Minaville street, in the city of Amsterdam, Montgomery county, and making an appropriation therefor."

It should not be the policy of the state to build new bridges over the Erie canal pending the reconstruction work, when proper provision will be made for bridges.

Assembly bill number 295, entitled "An act authorizing the reconstruction of superstructures and the necessary approaches of bridge between the towns of Northumberland, Saratoga county, and Greenwich, Washington county, and making an appropriation therefor."

This bill is disapproved for the same reasons set forth in disapproving Assembly bill number 1881.

May 14.

The omnibus veto included the following bills:

Assembly bill number 1664, entitled "An act to amend the agricultural law, relative to the sale and analysis of concentrated feeding stuffs."

Assembly bill number 2027, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the claim of John McDough against the State, for personal injuries alleged to have been sustained by him, in the performance of his duties as an officer at the Sing Sing State prison, at said prison in the month of October, nineteen hundred, and to render judgment therefor."

Assembly bill number 1535, entitled "An act to amend the penal code, relative to the punishment of kidnapping."

Assembly bill number 1808, entitled "An act to amend the code of civil procedure, in relation to the stenographer for trial terms, part one, of the Supreme Court."

Assembly bill number 814, entitled "An act to amend section fifty-seven of the railroad law, in relation to reports of railroad companies."

Assembly bill number 750, entitled "An act to amend the county law, relative to the appointment of special district attorneys."

Assembly bill number 1222, entitled "An act conferring jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Siebrand H. Niewenhous, an alleged owner of real property in New York city, for damages alleged to have been caused the said property by the operations carried on pur-

suant to chapter three hundred and thirty-nine of the laws of eighteen hundred and ninety-two, and the act amendatory thereof."

Assembly bill number 1529, entitled "An act to amend the primary election law, in relation to enrollment books and publishing lists of electors."

Assembly bill number 1896, entitled "An act to extend the time to commence the construction of the road of the Batavia and Northern Railroad Company and to expend ten per centum of the amount of its capital thereon and to complete its road and put it in operation."

Assembly bill number 204 (Senate reprint 1216), entitled "An act relating to loans on salaries."

Assembly bill number 710 (Senate reprint No. 908), entitled "An act to amend the county law, relative to the purchase of supplies for county institutions in the counties of Dutchess, Columbia, Putnam and Greene."

Assembly bill number 1594, entitled "An act to amend the forest, fish and game law relative to grey squirrels."

Assembly bill number 1668, entitled "An act to amend the code of civil procedure, relative to changing the name of religious corporations."

Assembly bill number 1381, entitled "An act to amend chapter six hundred and sixty-seven of the laws of eighteen hundred and sixty-eight, entitled 'An act to enable Conrad Popenhusen to found an institution in the village of College Point,' relative to taxation."

Assembly bill number 1455, entitled "An act to amend the forest, fish and game law, in relation to taking wild fowl in the Black River Bay in Jefferson county."

Assembly bill number 1473, entitled "An act to provide for the endowment of chapels and crematories."

Assembly bill number 1586 (Senate reprint No. 1222), entitled "An act to amend chapter three hundred and six of the laws of eighteen hundred and forty-three, entitled 'An act to authorize the election of local officers to discharge the duties of county

judge and surrogate in the counties of Orange, Chautauqua, Cayuga and St. Lawrence, Tioga, Oneida, Jefferson and Oswego,' relative to the term of office of the special county judge and special surrogate."

Assembly bill number 1632 (Senate reprint No. 1366), entitled "An act to confer upon the court of claims jurisdiction to hear, audit and determine the alleged claim of Peter Pfeiffer and Alma V. Pfeiffer and Clarence Pfeiffer, infants, against the State of New York for damages to their real property situate on the towing path bank of the Erie canal at Durhamville, New York, alleged to have been caused by leakage from said canal."

Assembly bill number 1487 (Senate reprint No. 1219), entitled "An act to confer upon the court of claims jurisdiction to hear, audit and determine the alleged claim of John T. Smith against the State of New York for damages alleged to have been sustained by him by injuries to his canal boats at the Fort Herkimer lock number forty-one on the Erie canal on or about the fifth of May, nineteen hundred and three."

Assembly bill number 1799, entitled "An act to amend the code of civil procedure, in relation to the list of jurors to be prepared by the commissioner, et cetera; commissioner to decide as to exemptions."

Assembly bill number 919, entitled "An act to amend the domestic commerce law, in relation to the duty of hotel keepers to provide fire escapes."

Assembly bill number 1336, entitled "An act to authorize the comptroller of the State to hear and determine the application of Ann Osgood for the cancellation of the eighteen hundred and seventy-one tax sale of lot two hundred and thirteen, iron ore tract, in the county of Essex."

Assembly bill number 1790, entitled "An act to amend chapter twenty-six of the laws of nineteen hundred and three, entitled 'An act to make the office of sheriff of Essex county a salaried office, in part, and to regulate the management thereof,' relative to Chinese prisoners."

Assembly bill number 583, entitled "An act to amend chapter nine hundred and seventy-five of the laws of eighteen hundred and ninety-five, entitled 'An act to divide the town of Watervliet, in the county of Albany, and to erect the town of Colonie out of the part set off from the said town of Watervliet,' in relation to a part of the easterly boundary of said town."

Assembly bill number 1972, entitled "An act to legalize the bonds of the village of Newark Valley, Tioga county, amounting to the sum of twenty-seven thousand dollars, issued for the purpose of defraying the expense of establishing a waterworks system for said village and its inhabitants, and to provide for the principal and interest of said bonds."

Assembly bill number 2029, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of William Gard against the State of New York, for damages alleged to have been sustained by him at the Auburn State prison, on or about the sixteenth day of February, nineteen hundred and three."

Assembly bill number 2031, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of James R. Angel against the State of New York for damages alleged to have been sustained by him at the Auburn State prison, on or about the sixteenth day of February, nineteen hundred and three."

Assembly bill number 2028, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Clarence Bailey, against the State of New York, for damages alleged to have been sustained by him at the Auburn State prison, on or about the sixteenth day of February, nineteen hundred and three."

Assembly bill number 2026, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the claim of Cane, McCaffrey & Company for damages caused by breach of contract, and to render judgment therefor."

Assembly bill number 1857, entitled "An act to amend the penal code relative to wilful violations of building laws, building code and ordinances."

Assembly bill number 1060, entitled "An act in relation to the improvement of public highways in the county of Yates."

Assembly bill number 1361 (Senate reprint No. 1217), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of Charles F. Parker & Company against the State for damages alleged to have been sustained by it and to render judgment therefor."

Assembly bill number 1778, entitled "An act conferring jurisdiction upon the court of claims to hear and determine the claim of the Stockbridge tribe of Indians against the State of New York.

Assembly bill number 1581, entitled "An act to amend the code of civil procedure, in relation to the jurisdiction of the court of claims."

Assembly bill number 121, entitled "An act to enable the county of Erie and the town of Grand Island to construct a bridge from the town of Grand Island across the east branch of Niagara river to the mainland, and to issue bonds therefor."

Assembly bill number 1903, entitled "An act to enable the town of Sweden, Monroe county, New York, to erect a soldiers and sailors' monument, and to purchase lands, and issue bonds to raise money therefor, and to provide for the maintenance of the same."

Assembly bill number 1480 (Senate reprint No. 1212), entitled "An act for the relief of persons, firms and corporations who rendered services and furnished labor or material which was used in constructing the state armory in the village, now city of Tonawanda, Erie county, New York."

Assembly bill number 120, entitled "An act conferring upon the court of claims jurisdiction to examine, audit and adjust the alleged claim of William Dunn against the State of New York."

Assembly bill number 1749, entitled "An act to amend section three hundred and ninety-a of the code of civil procedure, relative to the limitation of time to enforce a cause of action arising in another state."

Assembly bill number 1645, entitled "An act to confer jurisdiction on the court of claims to hear, audit and determine the

alleged claim of Henry Marningham against the State, for alleged injuries received by him while employed at the Hudson River State Hospital and to render judgment therefor."

Assembly bill number 1927, entitled "An act to amend the code of civil procedure in relation to jurisdiction of justices of the peace."

Assembly bill number 1284, entitled "An act to amend section three thousand, three hundred and forty-seven of the code of civil procedure, by adding thereto a new subdivision, to be known as subdivision fifteen, in relation to the meaning of the term 'justice of the peace' as used in sections nine hundred and forty-eight, nine hundred and forty-nine, nine hundred and fifty and nine hundred and fifty-one of said code."

Assembly bill number 1550, entitled "An act to amend an act in relation to religious corporations, constituting chapter forty-two of the general laws, with regard to transfers and conveyances by churches or societies of the Methodist Episcopal Church."

Assembly bill number 1759, entitled "An act to amend chapter eighteen of the general laws, in relation to the publication of the session laws."

Assembly bill number 1468, entitled "An act to regulate the practice of architecture."

Assembly bill number 1022, entitled "An act to release to Franklin Grady the right, title and interest of the people of the State of New York in and to certain real estate situated in the city of New York, borough of the Bronx, State of New York, and in the proceeds of said real estate."

Assembly bill number 1900, entitled "An act to amend the insanity law, relative to the Central Islip State Hospital."

Assembly bill number 1957, entitled "An act to supply the Greenwood fire district in the county of Steuben with water and to authorize the said Greenwood fire district to borrow money by the issue of bonds, for the purpose of installing a system of waterworks for said district."

Assembly bill number 485, entitled "An act to amend the penal code, in relation to stamping or marking articles manufactured of gold or of any alloy of gold."

Assembly bill number 1502, entitled "An act to legalize and confirm and provide for the enforcement and collection of certain assessments for local improvements in the city of Syracuse."

Assembly bill number 1629, entitled "An act to amend chapter fourteen of the laws of eighteen hundred and eighty, entitled 'An act to further amend chapter one hundred and forty-three of the laws of eighteen hundred and sixty-one, entitled "An act to amend and consolidate the several acts in relation to the charter of the city of Rochester" ' and to consolidate therewith the several acts in relation to the charter of said city."

Senate bill number 23 (Assembly reprint No. 1623), entitled "An act to amend the election law, relative to filling vacancies in nominations."

Senate bill number 486 (Assembly reprint No. 1920), entitled "An act to amend the penal code with relation to commitments to the house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York, and the state industrial school."

Senate bill number 1175, entitled "An act to amend the code of criminal procedure, by providing for an appeal by the defendant in certain cases from a judgment disallowing a demurrer to an indictment."

Senate bill number 860, entitled "An act to amend the general corporation law, relative to changing the names of corporations."

Senate bill number 952, entitled "An act to authorize William J. Gallagher, James D. Sherrill and Brodie G. Higley to erect and maintain a dam across the Hudson river, in Warren county, between North Creek and Riverside."

Senate bill number 767, entitled "An act to amend chapter one hundred and ninety-five of the laws of nineteen hundred and two, entitled 'An act to provide for the enrollment of members of political parties in towns,' in relation to filing the enrollment lists with the county clerk."

Senate bill number 1150, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of certain persons, residents of the town of Frankfort, county of Herkimer, against the state for damages alleged to have been sustained by them, and to render judgment therefor."

Senate bill number 354, entitled "An act to release to Charles E. Coddington all the right, title and interest of the people of the state of New York, in and to certain real estate situate in the borough of Manhattan, city, county and state of New York."

Senate bill number 824 (Assembly reprint No. 1654) entitled "An act providing for the appraisal of lands, structures and waters for the use of the improved canals as authorized by chapter one hundred and forty-seven of the laws of nineteen hundred and three."

Senate bill number 967, entitled "An act to amend section twelve hundred and seventeen of the code of civil procedure, in relation to attachment and undertaking for restitution, required in certain cases."

Senate bill number 692, entitled "An act to amend chapter one hundred and forty-two of the laws of nineteen hundred, entitled 'An act to make the office of sheriff of Cattaraugus county a salaried office, and to regulate the management thereof,' in relation to money received for boarding United States prisoners."

Senate bill number 856, entitled "An act to amend chapter five hundred and twenty-three of the laws of eighteen hundred and ninety, entitled 'An act in relation to the office of the sheriff of the city and county of New York,' as amended by chapter four hundred and eighteen of the laws of eighteen hundred and ninety-two."

Senate bill number 1363, entitled "An act to prevent waste of the timber in the forest preserve killed by forest fires, and to carry into effect the provisions of section seven of article seven of the constitution."

Senate bill number 627, entitled "An act to amend the tax law in relation to the franchise tax on corporations."

Senate bill number 971, entitled "An act to amend section twelve hundred and fifteen of the code of civil procedure, in relation to an application for judgment."

Senate bill number 1160, entitled "An act to amend section one hundred and seventy-six of the military code in relation to the control of armories."

Senate bill number 1147, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Frances Turzkowska against the State of New York for damages alleged to have been sustained by her on the State reservation at Niagara on or about the fifth day of July, nineteen hundred and three."

Senate bill number 738 (Assembly reprint No. 1922), entitled "An act to amend the highway law relative to the removal of obstructions caused by snow, and the prevention of such obstructions."

Senate bill number 1157, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Albert Snyder against the state of New York, for damages alleged to have been sustained by him in the construction of a state road in the town of Saugerties, Ulster county, New York."

Senate bill number 1357, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of S. D. Bawden against the state for services alleged to have been rendered by him as chaplain of the state industrial school at Rochester, New York, between March first, eighteen hundred and ninety-eight, and January first, nineteen hundred and one, and to render judgment therefor."

Senate bill number 1142, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Joseph Clever against the state of New York, for damages for injuries sustained by him while an inmate of the state industrial school of Rochester, New York, duly committed thereto."

Senate bill number 823, entitled "An act to amend chapter four hundred and forty of the laws of eighteen hundred and

ninety-six, entitled 'An act to facilitate the identification of criminals,' as amended by chapter four hundred and ninety-eight of the laws of nineteen hundred, and chapter two hundred and forty-four of the laws of nineteen hundred and two."

Senate bill number 257, entitled "An act incorporating the Personal Property Loan Company."

Senate bill number 1256, entitled "An act conferring jurisdiction upon the court of claims to hear and determine the claim of Marie P. Evans against the state of New York."

Senate bill number 1111, entitled "An act to amend chapter twenty-six of the laws of nineteen hundred and three, entitled 'An act to make the office of sheriff of Essex county a salaried office, in part, and to regulate the management thereof,' relative to Chinese prisoners."

Senate bill number 1146, entitled "An act conferring jurisdiction upon the court of claims to hear, audit and determine the alleged claims of citizens of the towns of Horseheads and Elmira and the city of Elmira for damages alleged to have been suffered by them occasioned by operations carried out pursuant to chapter nine hundred and forty-nine of the laws of eighteen hundred and ninety-six, chapter seven hundred and ninety-one of the laws of eighteen hundred and ninety-seven, and chapter six hundred and seven of the laws of eighteen hundred and ninety-eight."

Senate bill number 1112, entitled "An act in relation to the regularity and validity of the adoption by the electors of the village of Camden, New York, of a proposition for a separate board of light commissioners, and of the appointment of such commissioners by the board of trustees of said village, and of the adoption by the electors of said village of a proposition to establish an electric light system and issue bonds therefor, and of all proceedings relative thereto, and the power of the officials of said village to proceed to the establishment of said electric lighting system and issue bonds therefor, as authorized by the electors of said village."

Senate bill number 281, entitled "An act to amend the forest, fish and game law, in relation to the sale of trout."

Senate bill number 1145, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of James W. Watts against the state of New York for damage alleged to have been sustained by him and to render judgment therefor."

Senate bill number 1149, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Edwin H. Risley and Henry M. Love, composing the firm of Risley and Love, against the state of New York."

Senate bill number 913, entitled "An act to provide fire escapes in hotels."

Senate bill number 78, entitled "An act to further amend subdivision three of section fourteen hundred and sixty-six of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-six, in reference to terms of commitment of females."

Senate bill number 189, entitled "An act to amend the primary election law, relating to written consents of citizens for the use of their names on ballots to be voted at primary elections."

Senate bill number 1043, entitled "An act to incorporate Heffley collegiate institute and to authorize Heffley school to transfer all its property to such corporation."

Senate bill number 1140, entitled "An act to amend chapter five hundred and seventy-two of the laws of eighteen hundred and eighty-six, entitled 'An act in relation to certain actions against certain municipal corporations,' in relation to the time in which such actions may be brought."

Senate bill number 1345, entitled "An act to amend the code of civil procedure with reference to proceedings before trial in counties in which supreme court commissioners have been appointed by adding thereto a new section to be known as section seven hundred and twenty-a."

Senate bill number 982, entitled "An act to amend the code of civil procedure, in relation to the jurisdiction of the court of claims."

Senate bill number 1343, entitled "An act in relation to the recovery of certain assessments for local improvements in municipalities."

Senate bill number 410, entitled "An act to provide for the compensation of the copyists of old or mutilated records in the office of the register of the county of Kings and in the office of the clerk of the county of Kings.

Senate bill number 1314, entitled "An act to amend subdivision three of section seven of chapter 39 of the general laws, known as the railroad law, in relation to the power of a railroad company to condemn."

Senate bill number 522, entitled "An act to amend sections twenty and twenty-one of chapter 370 of the laws of 1899, entitled 'An act in relation to the civil service of the state of New York, and the cities and civil divisions thereof, as amended by chapter 270 of the laws of 1902, entitled 'An act to amend the civil service law, in relation to veterans.'"

Senate bill number 237, entitled "An act entitled 'An act to amend the banking law, relative to securities in which deposits in savings banks may be invested.'"

"The following bills are disapproved because they are virtually increases of salaries in the various municipalities and counties to which they refer. Good reasons have not been advanced to justify these increases, and I do not believe it is in the interest of good public policy to approve them:"

Senate bill number 1144, entitled "An act to amend chapter four hundred and forty-one of the laws of eighteen hundred and ninety-nine, entitled 'An act to create a commissioner of jurors in the several counties of this state,' relative to compensation of judges."

Senate bill number 1051, entitled "An act to amend chapter seven hundred and five of the laws of nineteen hundred and one, entitled 'An act to make the office of sheriff of the county of Kings a salaried office and regulating the management of said office,' in relation to assistant deputies."

Senate bill number 910, entitled "An act to amend chapter seven hundred and four of the laws of nineteen hundred and one, entitled 'An act to make the office of clerk of the county of Kings a salaried office and regulating the management of said office.'"

Senate bill number 869, entitled "An act to amend chapter seven hundred and six of the laws of nineteen hundred and one, entitled 'An act to make the office of register of the county of Kings a salaried office and regulating the management of said office.'"

Senate bill number 1224, entitled "An act to amend the county law, relating to the salary of the surrogate of Queens county."

Assembly bill number 941, entitled "An act to amend chapter six hundred and seventy-seven of the laws of nineteen hundred, entitled 'An act relating to attendants upon the supreme court and county court in and for the county of Queens,' in relation to the compensation of such attendants."

Assembly bill number 1244, entitled "An act to amend chapter seven hundred and four of the laws of nineteen hundred and one, entitled 'An act to make the office of clerk of the county of Kings a salaried office and regulating the management of said office,' in relation to the compensation of index clerks and custodians."

Assembly bill number 917, entitled "An act to amend chapter five hundred and twenty-three of the laws of eighteen hundred and ninety, entitled 'An act in relation to the office of sheriff of the city and county of New York,' relative to salaries."

Assembly bill number 1686, entitled "An act to amend chapter seven hundred and five of the laws of nineteen hundred and one, entitled 'An act to make the office of sheriff of the county of Kings a salaried office and regulating the management of said office,' in relation to assistant deputies."

Assembly bill number 1279, entitled "An act to amend the Greater New York charter, relative to the salary of the clerk for the children's court, second division, borough of Brooklyn."

Assembly bill number 888, entitled "An act to amend chapter five hundred and thirty-one of the laws of eighteen hundred and

eighty-four, entitled 'An act in relation to the office of the register of the city and county of New York,' in relation to the compensation of copyists or folio writers."

Assembly bill number 1744, entitled "An act to amend section twenty-five hundred and forty-six of the code of civil procedure in relation to the appointment of referees in the surrogate's court of New York county, and the appointment of two additional law assistants in said court."

The following city bills were returned "not accepted" by the various municipalities which they affected, and therefore they did not come before the Governor for action:

Senate bill number 318, to amend the act of 1895, chapter 576, which amended the act of 1893, chapter 714 (sewerage and drainage in the 23d and 24th wards in the city of New York) relative to the regulating, grading and paving of streets in said wards.

Senate bill number 542, relative to municipal club houses for boys in New York city.

Senate bil number 615, amending the Greater New York charter relative to medical examiners and abolishing the office of coroner.

Senate bill number 680, amending the Greater New York charter relative to salaries of certain officers of the municipal court.

Senate bill number 700, authorizing Buffalo to take and improve lands for park purposes in the eleventh ward.

Senate bill number 702, to release the interest of the city of New York in and to the estate of Angelina Crane, deceased.

Senate bill number 892, providing for the expense of acquiring title to, widening and improving White Plains road in the borough of the Bronx.

Senate bill number 895, relative to claims for damages caused by change of grade of streets or avenues in the 23d and 24th wards in New York.

Senate bill number 940, amending the Greater New York charter relative to the issuing of corporate stock to provide funds for

the preparation of maps of all the territory embraced within the several boroughs of said city.

Senate bill number 970, relative to additional claims for damages caused by change of grade of streets or avenues in the 23d and 24th wards in New York, and to extend the time for filing such claims, and for the appointment of commissioners of appraisal.

Senate bill number 1027, amending the Greater New York charter relative to qualifications of members of the police force.

Senate bill number 1040, to create and establish a department of forestry for the planting, transplanting and removal of trees and for trimming, spraying and caring of same in the city of Buffalo.

Senate bill number 1082, amending Greater New York charter relative to the municipal courts.

Senate bill number 1090, to incorporate the free public library in Plattsburg.

Senate bill number 1094, amending the Buffalo charter relative to the department of police.

Senate bill number 1152, authorizing the supreme court to hear and determine applications for a revision of the appraisal in proceedings to acquire land for Saint Nicholas Park in the city of New York.

Senate bill number 1183, creating a commission to establish a sewer system in the valley of the Bronx river in the county of Westchester.

Senate bill number 1199, amending the Greater New York charter relative to reinstatements in the fire department.

Senate bill number 1200, amending the Greater New York charter relative to reinstatements in the police department.

Senate bill number 1223, amending the Greater New York charter relative to the collection of assessments for local improvements.

Senate bill number 1308, amending the charter of Watertown relative to commissioners of education.

Senate bill number 1335, amending the act of 1894, chapter 524, relative to the Rochester fire department pension fund.

Senate bill number 1338, amending the Greater New York charter relative to the salaries of interpreters in the municipal courts in the city of New York.

Senate bill number 1361, amending the act of 1887, chapter 614, relating to the police pension fund of the city of Rochester.

Assembly bill number 998, amending chapter 565 of the laws of 1895, incorporating the city of Little Falls and acts amendatory thereof.

Assembly bill number 1058, relative to the common lands fund of the late town of Gravesend, and directing how such fund shall be expended.

Assembly bill number 1108, amending the Greater New York charter by adding a new title thereto relative to the retirement fund of the city of New York.

Assembly bill number 1209, amending chapter 507 of the laws of 1903, entitled "An act to abolish certain grade crossings of highways and railroads in the borough of Brooklyn in the city of New York, county of Kings, and providing for necessary changes in the grades of highways, streets, and avenues, and of portions of the railroad and right of way of the New York, Brooklyn and Manhattan Beach Railway Company, leased to the Long Island Railroad Company, and of the Brooklyn Union Elevated Railroad Company, leased to the Brooklyn Heights Railroad Company, so as to abolish present and avoid future crossings at grade, and providing means for the payment for such alterations or changes."

Senate bill number 1371, amending the act of 1894, chapter 524, relative to the pension fund for the paid fire department of the city of Rochester.

Senate bill number 1375, relative to the municipal court of the city of New York.

Senate bill number 953, amending the civil service law in relation to veterans.

Assembly bill number 180, amending chapter 580 of the laws of 1902, relative to service of precept in dispossess proceedings.

Assembly bill number 414, amending chapter 434 of the laws of 1897, relative to establishing Silver Lake park as a public park in the county of Richmond, in relation to the issue of corporate stock of the city of New York for acquiring lands for such park and improving the same.

Assembly bill number 641, to ratify the opening and extending of a new street, to extend from Chambers street to Reade street in the 6th ward of the city of New York, and to provide that the total cost of the acquisition of the said land shall be borne by the city of New York.

Assembly bill number 1254, authorizing and empowering the board of estimate and apportionment of the city of New York to refund assessments made upon property for acquiring title to two public parks or places on the East river, bounded by 84th street, 86th street, avenue B and the East river, and avenue B between 79th and 83d streets, and also for acquiring title to East River park bounded by 86th street, East river and avenue B.

Assembly bill number 1260, amending the Greater New York charter relative to collection of assessments for local improvements.

Assembly bill number 1340, amending Greater New York charter relative to fire marshals.

Assembly bill number 1382, amending chapter 359 of the laws of 1897, incorporating the city of Rensselaer in regard to the members and compensation of the police force.

Assembly bill number 1429, relative to the claims of volunteer firemen in the counties of Queens and Richmond, after their annexation to New York.

Assembly bill number 1538, relative to the rights of volunteer firemen upon disbanding a volunteer fire department and organizing in place thereof a paid fire department.

Assembly bill number 1452, amending Greater New York charter relative to the powers of the board of estimate and apportionment.

Assembly bill number 1500, amending chapter 63 of the laws of 1902, incorporating the city of Fulton, relative to the repairs of sidewalks and paving of streets.

Assembly bill number 1505, authorizing the board of estimate and apportionment of the city of New York to audit and allow the sheriff of the county of New York such legal expenses as he may be put to and not exceeding $5,000 per annum, for three years after the expiration of his term of office.

Assembly bill number 1512, amending the election law in relation to the term of office of the commissioners of election of the city of New York.

Assembly bill number 1546, amending the Greater New York charter relative to the collection of assessments for local improvements.

Assembly bill number 1575, relative to an assessment for the grading and paving of Prospect avenue, from 9th avenue to the old city line in the city of New York, late city of Brooklyn, in relation to payments thereon, and to cancelling liens of record by reason of said assessment.

Assembly bill number 1600, for the relief of the convent of the Sisters of Mercy of the borough of Brooklyn, and to authorize the comptroller of the city of New York to cancel assessments levied upon their real estate in the 30th ward of the borough of Brooklyn.

Assembly bill number 1630, amending chapter 360 of the laws of 1892, incorporating the city of Geneva, relative to the control of the finances of the city of Geneva, the investment of the sinking fund and the use and control of the highway fund.

Assembly bill number 1661, relative to the acquisition of the salaries of attendants of the supreme court in the first judicial district and the appellate division thereof in the first department, the court of general sessions of the peace in and for the city and county of New York, and the city court of the city of New York and the attendant of the court of special sessions, first department, children's part.

Assembly bill number 1760, to confer jurisdiction upon the board of education of the city of Niagara Falls to hear, audit, determine and pay the alleged claims of Edward Liefer, an infant, and Max Liefer, against said board of education, for damages

alleged to have been sustained by them, through the negligence of said board.

Assembly bill number 1770, relative to the Plattsburg free public library.

Assembly bill number 1825, authorizing the board of education of the city of Auburn to issue bonds of said city to provide for the erection of a new grammar school building, and the enlargement of the present high school building.

Assembly bill number 1829, amending the Code of Civil Procedure relative to precepts in dispossess proceedings.

Assembly bill number 1870, amending the Greater New York charter relating to the preference in the paid department of volunteer firemen.

Assembly bill number 1885, amending chapter 84 of the laws of 1886, incorporating the city of Jamestown, in relation to an acting police justice and to the salary of the overseer of the poor.

Assembly bill number 1926, amending the Greater New York charter relative to justices of the municipal court.

Assembly bill number 1966, amending chapter 553 of the laws of 1895, in relation to the supreme court in the first judicial district, the appellate division thereof in the first department, by providing for the appointment of a special deputy clerk.

Assembly bill number 1974, to authorize the city of Utica to extend its system of drainage and to borrow money to pay for same.

Assembly bill number 1976, amending section 178 of chapter 128 of the laws of 1899, entitled An act to incorporate the city of New Rochelle.

Assembly bill number 1997, amending Greater New York charter in relation to pensions to firemen killed while actually engaged in the performance of duty, or dying from injuries received while performing duty.

FRANK W. HIGGINS, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 4, 1905.

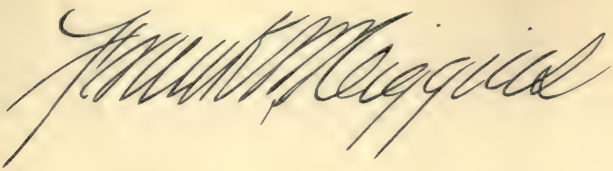
TO THE LEGISLATURE.—Pursuant to the mandate of the Constitution I have the honor herewith to communicate to you by message the condition of the State, together with such recommendations as seem to me expedient at this time.

STATE DEBT.

On September 30, 1904, the close of the fiscal year, the total debt of the State amounted to $9,410,660.00, classified as follows:

Adirondack Park	$510,000 00
National Guard Public Defenses	400,000 00
Canals	8,500,660 00
Total	$9,410,660 00

The sinking fund created by the annual tax of 13-100 of a mill per dollar of assessed valuation of real and personal property, provided by Chapter 79 of the Laws of 1895, amounted on the 30th of September, 1904, to $3,696,493.55, which, in effect, reduces the amount of the canal debt to the sum of $4,804,166.45 yet to be provided for. The debt maturing during the next fiscal year consists of $55,000.00 Adirondack Park bonds issued pursuant to Chapter 561



of the Laws of 1895, maturing January 30, 1905, and $200,000.00 National Guard Public Defense bonds issued pursuant to Chapter 672 of the Laws of 1898, $100,000.00 of which mature on the first days of May and November respectively, and for the payment of which provision must be made by the Legislature.

RECEIPTS AND EXPENDITURES.

The total receipts of the State Treasury from all sources for the year ending September 30, 1904, were $25,548,962.98; the total payments were $25,900,796.73, showing an excess of payments over receipts for the year amounting to $351,833.75. The actual available surplus on October 1, 1904, was $8,762,236.62. The total appropriations in force October 1, 1904, amount to $26,735,457.70, which is $2,319,228.07 more than the income of the last fiscal year which was applicable to the payment of appropriations, so that with the same revenue as last year there would be this excess of expenditures over receipts which must be met from the surplus. But the Comptroller estimates that the revenues for the present fiscal year applicable to the expenses of government will show a decided falling off as compared with the receipts for the fiscal year last past, unless provision be made by law for increased revenue from present sources or for new sources of revenue.

The satisfactory condition of affairs whereby the tax laws produced sufficient revenue for the requirements of the State is threatened by the effect of very recent decisions rendered by the Court of Appeals in test actions brought and successfully maintained by corporations to obtain a construction favorable to them of the corporation tax laws, which decisions not only reduce current receipts by large sums to be credited as refunds of taxes, but establish new rules for future assessments at variance with the practice of the State in the past. Particular reference

is made to the definition of "capital employed within this State" as laid down in the case of the Fort George Realty Company (179 N. Y., 49), and the construction placed upon the law imposing a tax upon premiums received by life insurance companies contained in the case of the Provident Savings Life Assurance Society (179 N. Y., 227).

It was impossible to foresee these decisions which are a great disappointment and surprise to the State authorities. While it is impossible to make an exact estimate of the shrinkage in revenue and of the amount of the refunds required that will result from this cause, the Comptroller estimates the loss at approximately $1,750,000.00. He further estimates that there will be a shrinkage in the receipts from the transfer tax of $1,000,000.00, based on the shrinkage of the first two months of the present fiscal year as compared with the first two months of the last fiscal year.

The extraordinary expenses of the present year will necessarily be large. Appropriations to meet the payment of judgments and other claims against the State must be made. We are confronted with a condition which is calculated to cause us to consider with utmost care the problem of adjusting receipts to expenditures. It seems unwise at this time to increase the burdens of taxation. The only alternative is the lowering of expenditures. It is obvious that while, if appropriations are sufficiently conservative, the surplus in the State Treasury is sufficient to carry us through another year without increased taxation, a crisis is at hand and provision should be made to avert it.

APPROPRIATIONS AND TAXATION.

Under our system of government National and State Legislatures do not make up single budgets of appropriations, but many special appropriation acts are passed without much regard for the sum total thereof or for the

relation it bears to the estimated revenue of the State. The finance committees of the two houses act to some extent as the responsible agencies of the Legislature to keep expenditures within the limits of the revenues of the State. I recommend that so far as possible the appropriations for the session be treated as a single act, that the amount thereof be kept close to the estimated indirect revenues for the ensuing year, and that they should not exceed $22,000,000.00. This will call for serious reductions in certain directions without corresponding increases except where the same are imperatively demanded. I am aware that while economy in the abstract is universally commended, the application of the principle to particular instances is surrounded with difficulties, and I urge upon all interests a patriotic and unselfish consideration of the problem.

TAX LEGISLATION.

The tax on the surplus and undivided profits of savings banks appears in its practical operation to be a tax upon the depositors, and is, therefore, contrary to the long-established policy of the State to exempt from taxation the savings of those who make use of these banks. The amount of the tax is charged against the current earnings of the bank and is not taken from the surplus, and it is claimed that the bank is, therefore, unable to pay the same rates of interest to depositors as it would if the tax were not imposed. A reduction of the interest on these accounts is a hardship to those affected thereby, and I recommend the repeal of this tax. The receipts from this source for the past fiscal year were $720,000.00, and the revenue thus lost must be made up; but at the same time justice seems to demand that this tax be abolished and that some more equitable method of raising the amount be resorted to.[1]

[1] A bill to repeal the savings bank tax was introduced in the Senate, but was not passed. See special message of May 4, in which the Governor again urged the repeal of the law imposing this tax, *post*, p. 766.

I also recommend that the law be amended so as to meet the criticisms made by the Court in the tax cases above referred to, in order to secure to the State the revenue which it will otherwise lose if these decisions are allowed to control.[2]

CENSUS.

The Constitution of the State (Article III, Section 4) provides that an enumeration of the inhabitants of the State shall be taken, under the direction of the Secretary of the State, in the months of May and June, 1905. Since 1875 no complete census has been taken by the State, although in the years 1855, 1865 and 1875 the census was

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2 Chap. 94, passed March 23, amended the Tax Law, § 187, relative to the taxation of insurance premiums, by providing that the tax, one per cent as in the former law, should be imposed on the gross amount of premiums received during the preceding year for business done at any time in this State. The phrase "at any time" was new. The act then declared that the gross amount of premiums should include "all premiums received during such preceding calendar year on all policies, certificates, renewals, policies subsequently canceled, insurance and reinsurance during such preceding calendar year, and all premiums that are received during such preceding calendar year on all policies, certificates, renewals, policies subsequently canceled, insurance and reinsurance executed, issued or delivered in all years prior to such preceding calendar year." Provision was also made for additional information to be included in the reports of insurance companies.

The statute seems to have been passed for the purpose of establishing a new rule in relation to the computation of the tax on insurance premiums, the court having held in the Provident Assurance Case, 179 N. Y. 227, that the existing statute on this subject was not retroactive, but applied only to future business.

The court held in the Fort George Realty Company Case, 179 N. Y. 49, that the real property of the company in this State, under the circumstances described, was not capital, and therefore subject to a franchise tax as provided by section 182 of the Tax Law. This section was amended in 1906, chap. 474, by including, among others, the following provisions: "the measure of the amount of capital stock employed in this State shall be such a portion of the issued capital stock as the gross assets employed in any business within this State bears to the gross assets wherever employed in business. For purposes of taxation, the capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located."

taken in a complete and thorough manner. The enumeration of 1892 was simply a count of the inhabitants of the State for the purpose of redistricting the State for the election of senators and members of assembly.

The value of a complete census is undoubtedly great, but such a census would cost at least $600,000.00, while a mere enumeration could be had for about $250,000.00. Considering the extensive work that is done by the Federal Government at the present time in taking the census under the permanent Census Bureau, whereby comprehensive statistics as to matters of public interest are collected and compiled, I am of the opinion that the State should conduct the enumeration at this time at the lowest possible cost consistent with accuracy and thoroughness. I recommend that proper legislation be immediately adopted in order that the Secretary of State may be ready to begin active operations in the field at the earliest date possible.[3]

INSANE AND CHARITIES.

The management of the State Hospitals for the Insane, fourteen in number, with a total number of patients on October 1, 1904, of 25,019, was completely centralized by legislation of 1902, abolishing the boards of managers of the various hospitals and leaving with the Commission in Lunacy complete jurisdiction, both as to financial control and internal administration. The advantages of centralized control of the financial operations of the hospitals are evident. It is of the utmost importance, however, that this great system of hospitals, involving the expenditure of so large a sum of money annually and the care of so many thousands of peculiarly unfortunate and defenseless

[3] Chap. 83, passed March 21, provided for an enumeration of the inhabitants of the State, and appropriated $300,000. The act was intended to provide for future enumerations without further legislation. The enumeration was required to be taken by election districts, and the act provided for the appointment of an enumerator in each district by the Secretary of State. The act contained numerous details regulating proceedings for the purpose of carrying its provisions into effect. This act was amended by chap. 144.

persons, should rest upon a broad basis of public interest and public confidence, and should retain the co-operation of philanthropic citizens throughout the State. In my opinion this can best be secured by leaving the control of all financial matters, as at present, in the hands of the Commission, and by providing for each hospital a board of managers, in general charge, through the superintendent, of the internal affairs of the hospital.[4]

The present overcrowding of the State Hospitals, the large increase in the number of the insane each year, and the expiration — next September — of the lease of the buildings now occupied by 1,200 patients at the Long Island State Hospital at Flatbush, make it imperative to take action during the coming session for a material enlargement of State Hospital accommodations. This can probably best be met, in part, by additional accommodations in existing hospitals, and in part by the establishment of a new State Hospital. In increasing the accommodations in existing institutions the importance of providing for each State Hospital a building especially adapted to the treatment of acute insanity should always be borne in mind.[5]

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[4] Boards of managers of State hospitals were restored by chap. 490, passed May 17, under which the Governor, on or after the 1st of April, 1905, was authorized to appoint for each hospital a board of managers to be composed of seven persons, not less than two of whom were to be women.

[5] Chap. 702, approved June 3, appropriated $150,000 for a reception hospital in New York as provided by L. 1904, chap. 760, being one-half of the expected cost of the hospital.

The same act appropriated $88,000 for two hospitals for the acute insane, "each to accommodate not less than eighty patients, and to be located at such established state hospitals as the commission may determine."

The act also appropriated $242,000 for a hospital capable of accommodating 440 chronic insane persons, to be established in connection with one of the existing hospitals.

The act also appropriated various sums to be expended in connection with existing hospitals. The supplemental supply bill, chap. 701, reappropriated $49,283.19, the unexpended amount of an appropriation made by chap. 541 of the laws of 1903, for the acquisition of a site for a State hospital in the northeastern part of the State.

It is not the duty of the State to maintain in the State Hospitals for the Insane, at the expense of the State, any insane person who has property or who has relatives legally chargeable with his support who are able, in whole or in part, to pay therefor. While the attorneys for the various State Hospitals have in many cases been able to collect the charges for support of inmates from the persons and property liable therefor, no effective check is placed upon the commitment as dependent insane of those who are not properly State charges. The rapid growth in the population of the insane hospitals since the adoption of the State Care Act is not entirely due to the increase in insanity in the State, but may to some extent be attributed to the practice of commitment of senile or feeble-minded relatives to the State institutions at the instance of those who are properly chargeable with their support. I recommend that before any insane person is permanently received as a State charge, the question be judicially investigated and determined whether such person is a pauper without relatives chargeable with his support and able to contribute thereto. The crowded condition of the State Hospitals would, in my judgment, be relieved if they were maintained strictly as institutions for the pauper or dependent insane. Mild cases of insanity in a purely technical sense, due to old age or other cause, where there is no more need for State treatment than in other cases of illness, should so far as possible be excluded from the State Hospitals and the patients cared for in the home or elsewhere as persons afflicted with other diseases are cared for.

The most urgent need in connection with the State charitable institutions appears to be that of additional accommodations for the feeble-minded at the institutions at Newark and Rome. A substantial increase in the capacity of these institutions would make possible a transfer of many adult inmates from the School for Feeble-Minded Children at Syracuse, and the reception there of many feeble-minded children who cannot now be accepted. The additional accommodations at Newark and Rome should be

sufficient to provide also for the admission of many feeble-minded adults now in county poorhouses.[6]

Great progress has been made during the past few years in improving the reformatory system of the State, and in providing proper buildings and equipment for the best reformatory work. With this end in view, the commitment of girls to the House of Refuge on Randall's Island and the State Industrial School at Rochester has been discontinued, and the former House of Refuge for Women at Hudson has been converted into a State Training School for Girls. The State Industrial School at Rochester is being transferred to a country site, and a commission has been appointed to select a new site for the boys' department of the House of Refuge on Randall's Island.[7]

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[6] Chap. 703, approved June 3, appropriated $58,000 for two additional cottages at the Newark Asylum; also $60,000 for dormitory buildings at the Rome institution, and $10,000 for the purchase of not less than 150 acres of farm lands with buildings.

An act passed in 1907, chap. 331, authorized the Governor to appoint a commission to select a site in the southeastern portion of the State for a new institution to be known as the Eastern New York State Custodial Asylum, for the care of epileptics and other feeble-minded persons needing custodial care. The commission was appointed July 27, 1907.

[7] By L. 1904, chap. 718, a commission was created composed of the Comptroller, the Fiscal Supervisor of State Charities, the President of the Board of Managers of the Society for the Reformation of Juvenile Delinquents in the city of New York, the President of the State Board of Charities, and the State Architect to select a site for an institution to be known as the New York State Training School for Boys. The site was to be located within fifty miles of New York and was to contain one thousand acres as nearly as practicable. The act contemplated the abandonment of the Randall's Island institution, and the transfer of its inmates to the new training school.

This act was amended in 1905, chap. 133, relative to contracts between the State and the city of New York for the exchange of certain lands in connection with the abandonment of Randall's Island, and the establishment of a new institution.

The act of 1904 was amended in 1906, chap. 617, which included, among other things, a provision authorizing the location of the site for the new institution within seventy miles of New York, instead of fifty miles as provided by the original act.

Another amendment passed in 1907, chap. 665, reduced the size of the site from one thousand acres to five hundred acres, and authorized the Governor to appoint a commission of three persons to select a site. This commission was appointed on the 27th of July, 1907.

It would seem that some additional safeguards should be provided looking toward more public competitive bidding in the purchases made by the hospitals and State charitable and reformatory institutions, either by amendment of the law or by some set of rules and regulations to be adopted pursuant to statutory authority granted therefor. Purchases wherever possible should be made in bulk and in large quantities and from the lowest satisfactory bidder, after public advertisement for bids.[8]

I recommend that all appropriations to enlarge or improve the State charitable and reformatory institutions be included in one bill with such provisions as will in every instance insure the most careful and economical expenditure of the moneys appropriated.[9]

I also recommend that suitable legislation be enacted to enable the State Board of Charities to transfer in proper cases inmates from one charitable or reformatory institution to another, where it appears that such persons more properly belong in an institution of the State other than the one to which they were originally committed. Different classes of defectives should not be allowed to remain

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8 Chap. 457, passed May 16, amending section 48 of the State Charities Law, required purchases for State charitable institutions, and for the New York State School for the Blind and the Elmira Reformatory, to be either for cash or on credit not exceeding thirty days. The act also provided for an annual meeting of the superintendents of charitable institutions, and of the State School for the Blind and the Elmira Reformatory, and of a representative of each of the Boards of Managers of charitable institutions to be held at the office of the Fiscal Supervisor in Albany, for the purpose of considering questions relating to the purchase of supplies for the various institutions, and the meeting was authorized to appoint a purchasing committee to be composed of six superintendents to act for one year. Such committee was to possess such powers as might be delegated to it by the general meeting.

9 This suggestion was embodied in chap. 703, approved June 3, which made appropriations for State charitable institutions, for the State School for the Blind and for the Elmira Reformatory.

in the same institution if by a proper system of transfers they can be so distributed as to receive the best and most scientific care.[10]

ADULT BLIND.

Attention has been called by my predecessors to the fact that no provision is made by the State for the instruction and employment of the adult blind. I recommend that the Legislature continue to consider the advisability of devising suitable means for the industrial training of this class of unfortunates.

The expenditures from the State Treasury for the last fiscal year for charitable purposes were upwards of $7,600,000.00, and of this amount only $82,225.00 was expended for the blind, and then only for the education of blind children and youths. What nobler charity can the State maintain than that which aims to enable those who have become blind after reaching manhood to be self-supporting!

ELECTION REFORMS.

It is the aim of the State so to guard the ballot box that an honest expression by the voters can be obtained. In the larger cities, colonization, intimidation and false registration are the principal crimes against the franchise. Laws for the punishment of these offenses have already been enacted. Proper means for the detection of such crimes, however, have not been provided. In the smaller localities the general acquaintance which exists among the residents insures sufficient protection against illegal voting, but in the larger centers of population more perfect methods of identification should be provided. The law now provides that upon offering his name for registry,

[10] Chap. 452, passed May 16, added to the State Charities Law a section, 16a, by which the State Board of Charities, with the written approval of the Governor, was authorized to transfer inmates from one charitable institution to another, and the act regulated the procedure in such cases.

the elector shall state the place from which he voted last. I would suggest that in addition to this he should be required to state the time when he voted last. In the large cities the principal colonization frauds are perpetrated from lodging and furnished room houses. I would recommend that provision be made for reports from these houses similar to those made by hotels under the Liquor Tax Law to the State Excise Department. This might be effected under a licensing system at a nominal fee based upon the number of beds, and might be placed under the direction of the State Department of Health which now has some authority over such places.[11]

Further means of identification of naturalized citizens should be provided for in the registry books so as to require either an absolute statement of the time of naturalization and of the court which performed the act, or the production of the naturalization papers themselves, so that the election authorities could verify the statements thus made. Too much latitude has been permitted in this direction in the past. During the last election it was discovered that great numbers of alleged naturalized citizens had no right to vote, either having been imposed upon, or having been parties to the attempted frauds. The naturalization laws of our State are much more effective in guarding against such abuses than are the United States laws. One of the principal methods of securing fraudulent naturalization papers has been for the holder of legal papers to apply for duplicate papers, and then to sell such duplicate papers to persons not entitled to possess them. The law should be amended in this direction so that duplicate naturalization papers could be procured only upon an order of the court, entered after a due presentation of

[11] Chap. 675, approved June 1, amended the Election Law, section 32, subd. 1, relative to personal registration by adding to the register several columns for additional information, including a statement of the year in which the applicant last registered or voted.

the facts as to the lost certificates. This whole subject of further guarding the elective franchise is commended to your consideration and I hope that such laws may be enacted as will more effectually guard the purity and integrity of the ballot.

I recommend to the consideration of the Legislature both the extension and restriction of the right to vote at special tax elections in cities of the third class, to those residents whose names shall be on the assessment roll, without limitation as to sex. If the right to vote at tax elections is to be limited to property holders, it would seem but an act of justice to extend that right to women property holders as well as to men.[12]

CANALS.

The bids on six test contracts for parts of the work on the 1000-ton barge canal seem to warrant the belief that the entire construction can be completed within the engineers' estimates of the probable total cost of the work. It is gratifying to know that this great expenditure, ordered by an overwhelming popular vote, will probably prove adequate so far as concerns that portion of the entire cost set apart in the estimates for construction, and it is to be hoped that the estimates of damages for taking of property will prove to be equally accurate.

The enlargement of the canal system of the State will be carried out to a considerable extent by the canalization of the rivers and other navigable waters of the State. It seems important at this time to call attention to the fact that the United States Government has expended yearly in the United States for river and harbor improvements vast sums of money of which the State of New York has received but a trifling percentage as compared with the percentage which the commerce of New York bears to the

[12] A bill embodying the Governor's suggestion as to the right of women to vote at special tax elections in third class cities was introduced in each house. It was passed by the Assembly, but failed in the Senate.

total commerce of the United States. In the past twenty years the United States has expended nearly $300,000,000 in river and harbor improvements, of which less than seven per cent. has been expended in the State of New York. It would seem proper that the senators and representatives of the State of New York in the National Congress be memorialized by the Legislature to press the claims of this State for larger appropriations for the improvement of natural waterways in connection with the canal system of the State.

The Constitution of the State (Article VII, Section 8) prohibits the sale of the Erie Canal, the Oswego Canal, the Champlain Canal, the Cayuga and Seneca Canal or the Black River Canal, and imposes upon the State the perpetual management of the same. Whenever it appears that any portion of the canal system has so far survived its usefulness as to make its maintenance by the State a burden with no corresponding benefits, the Legislature should submit to the people the proper constitutional amendment to permit the abandonment of such portion.

The Black River Canal from Boonville north is now practically an abandoned waterway, serving no useful purpose except to those employed to manage it under the constitutional mandate above referred to. I therefore recommend that so much of said canal be leased, sold or otherwise disposed of, and that the question be submitted to the people for their determination.[13]

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[13] A constitutional amendment was proposed in the Senate authorizing the Legislature to declare abandoned any part of the canals not deemed necessary for further use, and provide for the construction of a railroad on canal lands to be operated either by the State or by a lessee. The amendment was not adopted.

Two constitutional amendments affecting the canals were approved by the people at the general election in 1905. One amended Art. 7, sec. 4, (the debt section) by authorizing the extension of the time for the payment of a debt from eighteen years to fifty years. The other amendment added to this article section 11, authorizing the Legislature to provide for the payment of State debts from the general fund, or to provide for a sinking fund for the payment of the principal and interest on existing or subsequent State debts.

GOOD ROADS.

Without increase in the estimated revenues of the State for the ensuing year, appropriations for good roads must be modest in amount, pending the action of the Legislature and the people upon the proposed constitutional amendment permitting the issue of bonds for the improvement of the highways. The attention of the Legislature to this amendment is commended.

The highways that are to be improved under the proposed plan should constitute a reasonably complete system of land intercommunication, otherwise we shall simply have patchwork. Provision should be made for the proper maintenance of the improved highways after their construction. They should be kept in repair at the expense of the locality, under the supervision of the State, and I recommend the adoption of legislation which will provide for that result. I also recommend that the contracts for building the roads require that the contractor shall maintain the same for at least five years after acceptance by the State Engineer. I strongly urge upon the Legislature the importance of placing the execution of this plan of improved highways under special expert supervision under the direction of the State Engineer and Surveyor and of developing the same in accordance with an approved system, to the end that the money expended may not be wasted but may result in permanent and useful improvements.*

BANKS.

The whole number of State banks of deposit and discount engaged in business September 30, 1904, was 186,

* The Constitutional amendment mentioned by the Governor was approved by the people at the general election in November, 1905. It added to article 7 a section, 12, authorizing a State debt or debts not exceeding at any one time $50,000,000 for the improvement of highways. The Legislature was authorized to apportion to a county thirty-five per cent. and to a town fifteen per cent. of the expense of an improved highway therein.

against 190 at the corresponding date in 1903. Their resources amounted to $443,487,307.00, which was an increase of $75,873,962.00 from the corresponding date in 1903. The surplus and undivided profits of these institutions at the same date were $34,087,797.00, a gain during the year of $1,366,684.00.

The savings banks of the State at the date of the last report carried 2,406,660 open accounts. Their total resources were $1,275,189,167.00, which is a gain of $53,764,-165.00 over the previous year.

The number of trust companies reporting on July 1, 1904, was eighty. From July 1, 1903, to the ensuing January there had been a decrease of more than one hundred million dollars in the combined assets of these institutions, which had been altogether recovered on July 1, 1904, with over sixty million dollars besides, making the total resources of these companies on the last-named date $1,208,-450,930.00. Their combined surplus and undivided profits at the same date were $144,345,580.00.

The aggregate resources of all the institutions subject to the Banking Department at the dates of the last reports by them were $2,988,602,422.00, or $181,233,853.00 more than at the corresponding dates in 1903.

Restrictive legislation guarding the rights of the depositor and protecting him from loss caused by unsafe banking should be enacted and enforced. The list of securities in which savings banks may invest the money of their depositors should be extended only with the greatest caution and upon the most satisfactory evidence that the added line of investments is one that is safe and conservative, not only for savings banks, but also for trust funds. Special legislation enumerating the authorized investments should be superseded by a general law, establishing proper

standards of safety. Savings banks should be, if possible, limited to their original purpose of benevolent institutions organized to hold and invest the savings of small depositors, and the use of such institutions should be denied to people of wealth who are capable of managing their own affairs and who make large deposits therein for investment purposes only.

Investment associations and concerns should be brought more strictly under State control, and such concerns whenever operating under unsafe and vicious systems should be suppressed.

Bank directors should be compelled to make periodical examinations of the books of their institutions and should be held responsible for the thoroughness and sufficiency of such examinations. Building and loan associations should without exception be prohibited from loaning their funds upon second mortgage. The Superintendent of Banks should be directed by law to examine, at least once in every six months, the books and securities of all banks and trust companies.

The attention of the business world is again attracted to the evil results of unrestricted loans by banking institutions to favored individuals so that the solvency of the banks and the safety of depositors are made to depend to a large extent upon the financial integrity of a few borrowers. Safe banking requires that liabilities to the bank be distributed in number and restricted in amount. The provisions of the National Bank Act limiting the total liabilities for money borrowed by any person to ten per cent. of the amount of the paid-in capital stock of the bank are to be commended. I recommend that, with reasonable exceptions as to the discount of strictly business or secured paper, the similar provision in the State law be amended by fixing the amount to be loaned to the individual bor-

rower at not more than twenty per cent. of the capital stock actually paid in.[14]

INSURANCE.

The volume of business conducted by the corporations, companies and societies under the supervision of the Insurance Department has materially increased. The total amount of risks in force at the close of the last calendar year, including life, fire and marine insurance was $37,501,-282,689.00. It is obvious that the State owes a duty to its citizens who invest their money in insurance to this vast extent to exercise proper supervision and control over the companies doing business within its limits. No insurance company, association or fraternal order that fails to meet its obligations in full within a reasonable time after they accrue, should be allowed to do new business.

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[14]Chap. 456, passed May 16, amending the Banking Law, section 25, contained numerous provisions intended to establish strict regulations relating to bank transactions, the use and investment of bank funds, and the conduct of bank officers.

Chap. 394, passed May 16, amending section 8 of the Banking Law, required every bank, trust company and individual banker to be examined twice each year instead of once each year as required under the former law; savings banks, as before, were required to be examined at least once in two years, and all other corporations specified in section 2 of the Banking Law were to be examined every year.

Chap. 401, passed May 16, amended section 116, subdivisions 5 and 6 of the Banking Law, relative to savings bank investments, by striking out the provisions authorizing an investment in stocks or bonds of particular municipal corporations, and inserting general provisions on this subject. The new subdivision 5 authorized the investment in the stocks or bonds of any city in any State of the United States admitted to statehood prior to January 1, 1896, and has not since 1861 repudiated any lawful debt, and which city contains not less than 45,000 inhabitants, and was incorporated at least twenty-five years before making the investment, and has not defaulted more than ninety days in the payment of principal or interest on any debt, nor compromised any debt. The act also prescribed a maximum of debt limitation of such cities, which was to be considered by the Bank Superintendent in authorizing such investments. The new subdivision 6 regulated other investments by savings banks.

EXCISE.

The total gross receipts under the Liquor Tax Law for the period beginning May 1, 1903, and ending April 30, 1904 — the statutory liquor tax year — amount to $17,797,642.84. This is an increase of $5,210,942.52 over the receipts for the previous year. The State's share of the liquor tax for the year ending April 30, 1904, amounts to $9,200,560.59, being an increase of $4,694,057.25 over the previous year. The localities show an increase of $516,855.27 in the receipts for the year ending April 30, 1904, over the receipts for the previous year.

During the year ending April 30, 1904, 28,829 certificates were issued, as against 30,144 for the previous year, being a decrease of 1,315 certificates, or 4.3 per cent.

The estimated total gross receipts for the year beginning May 1, 1904, and ending April 30, 1905, are $17,900,000.00.

The right to determine by popular vote whether trafficking in liquors shall be permitted in a locality, is now limited to the towns of the State. It is, in my judgment, worthy of the consideration of the Legislature whether this right of local option should not be extended to cities and the divisions thereof.[15]

EDUCATION.

Unification of the educational system is established. The new organization is in good working order. The unfortunate controversies which existed under the dual system have been happily terminated.

The growth of our school system during the past ten years has been marked, as appears from the following statistics:

Ten years ago there were 11,778 school districts in this State employing 25,414 teachers and registering 1,083,228 pupils. The average daily attendance of these pupils was

[15] The subject of local option in cities was considered by the Legislature in 1905, 1906, 1907 and 1908. No law was enacted authorizing the exercise of such option.

668,097 and the expense of maintaining the schools was $18,921,246.00.

According to the last complete report there are 11,726 school districts — a decrease of 52; 34,453 teachers employed — an increase of 9,039; 1,256,874 pupils registered — an increase of 173,646; a daily average attendance of 928,335 — an increase of 240,238; a total expenditure for school purposes of $41,418,096.00 — an increase of $22,496,850.00.

Ten years ago the State paid toward maintaining these schools, exclusive of aid given to high schools, $3,712,352.00. Under the last apportionment State aid amounted to $3,970,555.00 — an increase of $258,203.00. From these two groups of figures it appears that the aid given by the State to the schools has not kept pace with the growth of the schools. Ten years ago it amounted to $3.43 per pupil; the last report shows that it amounted to $3.16 per pupil, or a decrease of $0.27 per pupil.

Included in the above figures for ten years ago were 285 high schools maintained at an expense of $1,698,860.00. These schools employed 1,158 teachers and registered 29,668 pupils. The last report shows 636 high schools — an increase of 351; 3,506 teachers — an increase of 2,348; 81,108 pupils — an increase of 51,440; amount expended, $5,007.055.00 — an increase of $3,308,195.00 The State aid given to high schools ten years ago amounted to $78,897.00; the amount so apportioned in the last report is $290,025.00 — an increase of $211,128.00, or about 267 per cent.

Ten years ago the State rendered aid to the public high schools to the extent of $2.66 per pupil; last year this amount was $3.58 — an increase of $0.92 per pupil.

Ten years ago there were 93 colleges in the State employing faculties numbering 2,212 members and instructing 21,833 students with an expenditure of $4,792,987.00. The last report shows 119 colleges — an increase of 26; 3,871 members of the faculty — an increase of 1,659; 39,718

students — an increase of 17,885, and expenditures amounting to $10,061,269.00 — an increase of $5,268,282.00.

Ten years ago there were 125 private academies employing 1,031 teachers, instructing 12,131 pupils, with an expenditure of $1,141,422.00. The last report shows 144 private academies — an increase of 19; employing 1,288 teachers — an increase of 257; instructing 13,988 pupils — an increase of 1,857; expending therefor $2,099,945.00 — an increase of $958,523.00. The State aid given these private academies ten years ago amounted to $17,956.00. The amount so apportioned in the last report was $22,332.00 — an increase of $4,374.00.

CHILD LABOR.

New York is in advance of most of the states of the Union in the matter of legislation on the subject of child labor. The law, however, is not rigidly enforced and the lack of proper legislation in neighboring states makes it difficult to establish proper restrictions upon the work in this State. Uniformity of legislation on the subject of labor is a matter which should be strongly urged by the State of New York, in order that the condition of women and children may be ameliorated throughout the country and in order that the industries of the State may be relieved from the unfair competition of those states which place no restriction upon the subject. The place for children of school age is in the school, and they should not be withdrawn therefrom, or allowed to work in any way which interferes with their school attendance, before they reach the age at which primary education ordinarily ends.[16]

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[16] Chap. 493, passed May 17, amended section 76 of the Labor Law, by adding a provision authorizing the Commissioner of Labor to demand and obtain evidence of the age of a person apparently under the age of 16 years employed in a factory without the filing of an employment certificate, as required by the Labor Law.

The same statute amended section 167 by authorizing the health officer or member of a board of health of a city, town or village in which a factory or

AGRICULTURE.

The liberal appropriations made for the State Department of Agriculture, the Agricultural Experiment Station at Geneva, the College of Agriculture and the Veterinary College at Cornell University, the State Fair and the county and town fairs, indicate the fostering care which the State exercises over the development of its agricultural interests.

The functions of the State in this regard should be twofold: first, educational, whereby conditions are aimed at which will insure a uniform high standard for agricultural products in this State, whereby the ravages of disease may be prevented and checked, whereby improved methods of cultivation and production may be introduced and whereby the farm, the dairy and the orchard may be brought to their highest state of productivity; and, secondly, protective, whereby the prevention and detection of the sale of adulterated food products are sought. The value of this work depends upon the thoroughness and skill with which it is done. The work of the State Department of Agriculture is far-reaching in its character. Its effectiveness depends largely upon the care and precision with which the statutes are drawn under which its duties are executed. I especially recommend to your consideration the report of the Commissioner of Agriculture in this regard.

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mercantile establishment is situated, and in which a person apparently under the age of 16 years is employed without filing an employment certificate, to demand and obtain evidence of the age of such person, or the filing of such an employment certificate within the time specified, and imposing a penalty for the employment of such person after that time without furnishing the required evidence or certificate.

Chap. 518 amended sections 71 and 163 of the Labor Law by adding provisions relative to procedure on applications for employment certificates.

Chap. 519, passed May 17, amended sections 174; 177 and 179a by extending to second class cities the existing provisions applicable to first class cities, which prohibited the sale of newspapers in any street or public place by a male child under 10, or a girl under 16 years of age.

PRISONS.

The laws relative to penal institutions and prison administration and to the method of dealing with criminals have undergone radical changes in this State in recent years. Penologists still maintain that our prison laws are largely anomalous and antiquated, and they urge the adoption of a system of State control for all State offenders, the extension of the parole system, the enlargement of the reformatory idea, and other changes looking toward a more consistent and scientific treatment of the subject. I recommend to the Legislature the consideration of this problem and the wisdom of adopting more modern methods when the finances of the State will permit. I also recommend that some provision be made for the transfer from penal institutions of imbeciles and idiots committed thereto, to other State institutions where they may receive proper treatment.

STATE ARCHITECT.

The State Architect reports that he has had for some time past an average of 150 contracts, large and small, in force at one time and scattered all over the State. For the past year or two appropriations have been given his office covering the services of but four regular inspectors. It is obvious that these four men can by no means cover the ground. The interests of the State should not be permitted to suffer by reason of insufficient inspection and in my judgment such interests can be so far promoted by thorough and careful inspection as to save to the State more than the amount of the salaries paid for proper supervision of the work done under building contracts.

The law should give the State Architect ample time to prepare plans and specifications for public buildings. He should not be expected to have completed plans for any important work prepared in less than six months after the appropriation therefor is made.

PUBLIC BUILDINGS.

The Superintendent of Public Buildings again calls attention to the inadequate office space contained in the State buildings and to the fact that the State is hiring offices for certain departments for which there is no room in the State buildings. The suggestion is made for the removal of the Department of Education, including the State Library, from the Capitol to a separate building to be constructed for its accommodation.[17] The Superintendent also again calls attention to the unsatisfactory condition of the plumbing, heating, lighting and drainage of the Capitol, and I recommend that careful attention be given to his report on this subject.[18]

CIVIL SERVICE.

The Constitution of the State provides (Article V, Section 9) that "Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which so far as practicable, shall be competitive."

The Civil Service Law provides specifically for the classification of the civil service of the State and the civil service

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[17] An act, chap. 678, was passed in 1906, providing for the erection of a State Library building intended also for the accommodation of the Department of Education, and the State Museum of Natural History. The Trustees of Public Buildings, consisting of the Governor, Lieutenant-Governor and the Speaker of the Assembly, were authorized to select a site for the new building near the Capitol. The act appropriated $400,000 for the site, and authorized the erection of a building at an expense not exceeding $3,500,000. The trustees selected a site consisting of the block between Washington avenue and Elk street, Swan street and Hawk street, excepting lands occupied by All Saints Cathedral and the Capitol Power House.

[18] The supply bill of 1905, chap. 700, appropriated $25,000 for the plumbing and drainage system of the public buildings; also $5,000 for the installation of a proper system of heating, lighting and power service for the public buildings, besides $52,000 reappropriated from the act of 1903, chap. 600, to provide for an electric plant for the lighting of the Capitol, Executive Mansion and other public buildings.

of the various cities of the State, but provides only in general terms that the State Civil Service Commission may from time to time extend the classification to the other civil divisions of the State whenever practicable. This discretionary power has been exercised in but one instance, when, in June, 1900, the classification was extended to the county service of New York, Kings, Queens, Richmond and Erie counties.

The counties of Albany, Monroe, Onondaga and Rensselaer contain cities of the second class and have a population of upwards of 150,000 each, with the exception of Rensselaer, which has a population of 121,697. The following counties also have a population of upwards of 100,000 each: Westchester, 183,375; Oneida, 132,800; Orange, 103,859. In these counties are institutions for the care and confinement of the delinquent and dependent classes and public offices where the rule of the Constitution can well be applied.

In the smaller counties of the State where the employees are few in number and where the fee system prevails, there is difficulty in applying the merit system effectively, but in these larger counties there seems no reason why the merit system should not profitably be extended to comply with the mandate of the Constitution.

The Society for the Reformation of Juvenile Delinquents in the City of New York maintains a house of refuge for juvenile delinquents on Randall's Island. While it is a private corporation, the managers being elected by the members of the society, yet children are committed to such house of refuge by the courts and the State appropriates annually a large sum for the maintenance of such juvenile delinquents.

The officers and attendants of the Randall's Island institution are paid by the corporation out of funds received from the State. Such employees are about 114 in number and their payrolls for the fiscal year ending September 30,

1904, amounted to $73,184.13. The society is essentially a state agency and the civil service provisions of the Constitution should be applied to the appointment and promotion of such employees, as a condition precedent to the further receipt of state aid.

PUBLIC HEALTH.

The best methods of preventive medicine and public hygiene should be adopted by the State and the civil divisions thereof. Germ diseases may be classed as preventable diseases, particularly those that are caused by the contamination of the water supply. All sources of public water supply should be examined and analyzed by the State Commissioner of Health as rapidly as possible and at frequent intervals. The private water supply of public resorts should also be subjected to state analysis and the results should be made public. I recommend that the Legislature devise a system of state inspection of domestic water supplies, to be maintained at the cost of the municipalities, corporations and private owners affected thereby.

The growing demands for additional water supplies in the greater cities and for adequate supplies of pure and wholesome water for domestic purposes in other municipalities indicate that in the not distant future the problem of water supply for municipalities will be a most serious one. It seems doubtful whether all centres of population can continue indefinitely to rely upon a natural supply of pure and wholesome water without recourse to artificial methods of purification. The question presents itself whether it is not feasible to develop some plan whereby the municipalities may be insured a water supply at a minimum cost under state supervision through state conservation of the waters of the Adirondacks and other sources. The Legislature of 1904 enacted a law creating a water storage commission which has for its object practically the conservation of water for power purposes. A

State commission, having also for its object the supply of water to the cities, might be of great service.[19]

FISH, GAME AND FORESTS.

The forests and streams of the State should be made attractive places of resort for the invalid and for those in search of wholesome recreation in the open air. To this end the fish, game and forest laws should be strict and consistent. The preservation of the wilderness and the restocking of the waters of the State with food fish, and the protection of game, should, in my judgment, be encouraged, not only for the benefit of our own people, but for the purpose of attracting to our State the ever-growing army of sportsmen and pleasure-seekers.

The policy of the State towards the extension, preservation and control of the Forest Preserve demands careful attention, and I shall at some later date communicate to you by special message my recommendations on that subject, whereby I hope to be able to outline a more comprehensive and consistent treatment than would be proper within the limits of this message.[20]

UNITED STATES DEPOSIT FUND.

The Comptroller in his report of 1903 states that, " This trust fund under the State Finance Law is included with the common school and literature funds as a part of the

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[19] Chap. 723, approved June 3, created a State water supply commission to consist of five members, appointed by the Governor and Senate. The commission was given jurisdiction over the water supply of all municipal corporations or other civil divisions of the State, and the local authorities of such municipalities and divisions were required to submit to the commission for its approval, maps and plans relative to any additional water supply. The commission was also required to investigate and report to the Legislature " concerning the available sources of water supply in this State, the respective purity and quantity of each source of supply, and the availability of each to be used for localities other than those immediately adjacent thereto;" also the water supply of various municipal corporations and civil divisions and the sewerage systems thereof.

[20] See special message of March 9, *post*, p. 753.

education fund, by Article IV of that statute, but is managed pursuant to provisions applied to no other fund or class of investments for public moneys, with results and tendencies so unsatisfactory that a change of method seems imperative for the preservation of the fund and for the advantage of the citizens entitled to the benefits contemplated by the original acts under which the money was accepted by the State."

The United States Deposit Fund is distributed in the care of 122 loan commissioners, two in each county. It is loaned on real estate mortgages on improved lands worth double the amount applied for, exclusive of buildings. With the lapse of sixty years the benefits to be derived from distributing loans of small amounts in remote districts have become legendary and the method proves to be antiquated, expensive and inefficient for the purpose. During the past fiscal year the fund suffered a diminution from losses on foreclosure of mortgages, and other causes, of $169,312.73. The law requires that transfers be made from the general fund to maintain the principal of this fund intact. The annual net income from the fund for the year ending September 30, 1900, is stated by the Comptroller to be less than .2 of one per cent. The average net rate of interest on loan commissioners' mortgages since the year 1895 is 2.2 per cent. During the same period the net rate of interest received on municipal bonds held by the Comptroller is 3.75 per cent. At the close of the year 1902 the State owned approximately 18,000 acres of land acquired through foreclosure of loan mortgages, upon which the rents collected for that year were less than one per cent. of the cost of the land to the State. The acreage from this source is constantly increasing, much of it unsalable or only to be disposed of at heavy loss. The tendency appears to be that this trust fund will become an annual charge upon the taxpayers, instead of an aid, unless some remedy is provided. I therefore recommend that the present system of investments be changed and that the

fund be held and managed under the supervision of the Comptroller's office in some such manner as the common school fund and literature fund now are held and managed.

TENEMENT HOUSE LAW.

The Court of Appeals has finally upheld the constitutionality of the only part of the Tenement House Law of 1901 which has been contested in the courts. This measure is one not only of charity, but also of justice; not only for the benefit of the poorest families, but also for the general welfare of the community. For its enactment and enforcement my predecessor is entitled to the highest credit. The law is now definitely established. Large sums of money have been expended under it, and it would seem to be of the utmost importance that no change should be made in it except where the necessity therefor is apparent.[21]

PRESERVATION OF PLACES OF SCENIC AND HISTORIC INTEREST.

The preservation of historic objects or picturesque places in the State should be encouraged. The beautiful and wonderful features of natural landscape should be protected from disfigurement, and places and objects identified with the history of the State should be saved from obliteration. It does not seem necessary that the State should expend large sums of money for this purpose, but it should aid by legislation, wherever possible, the protection of natural scenery and encourage the work of those associations which are organized for the purpose of commemorating historic events and marking points of historic interest. Legislation which seeks to promote the improvement of cities and villages by the adornment of their parks and thoroughfares, and which compels the removal of the unsightly and disfiguring from public places, should be enacted.

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[21] See Tenement House Department v. Moeschen, (1904) 179 N. Y. 325; also New York v. Herdje, (1902) 68 App. Div. 370.

Chap. 507, passed May 17, amended the tenement house acts by prescribing additional regulations concerning fire-escapes.

LOUISIANA PURCHASE EXPOSITION AT ST. LOUIS.

New York State participated with success in the great exposition which has just closed at St. Louis. The exhibits of the State received suitable recognition in the awards made by the exposition authorities. The grand total of awards to this State was 559. The supremacy of the State in many of the departments in which exhibits were made was demonstrated. The work of the commissioners was performed with zeal and discrimination and reflects credit upon the State.

I desire to renew the recommendation of my predecessors, that laws, so far as possible, be general in their application and that the unnecessary multiplication of statutes be avoided. The Constitution of the State in terms prohibits many classes of special acts[a] and the spirit of the Constitution and of our institutions demands the application of the principle of equal rights to all and special privileges to none.

I commend to your thorough study the reports of the various departments which are about to be submitted to you. They contain much that is of high value and great interest to the student of governmental affairs. It is impossible in the limits of this message to extract therefrom more than the broadest generalizations. The work of the departments is in a satisfactory condition and the reports of the heads thereof are thorough and exhaustive.

FRANK W. HIGGINS.

SPECIAL MESSAGES.

January 16. To the Assembly:

EXECUTIVE CHAMBER,
ALBANY, *January* 5, 1905.

HON. S. F. NIXON, Speaker of the Assembly, Capitol:

DEAR SIR.— In order to facilitate public business and to economize the time of all concerned, Governor Higgins

[a] Const. 1894, Art. 3, § 18.

directs me to announce that he has decided upon these hours for receiving callers at the Executive Chamber:

Members of the Legislature from 10 to 11 o'clock A. M.
State officers from 11 to 12 o'clock noon.
Newspaper correspondents, noon.
General public, 12 to 1 o'clock P. M.
Members of the Legislature from 4 to 5 o'clock P. M.
Newspaper correspondents, 5 o'clock P. M.

Very truly yours,

FRANK E. PERLEY,
Secretary to the Governor.

February 20. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 20, 1905.

"The problem of providing an additional water supply for the city of New York that shall be abundant in quantity and satisfactory in quality is one which demands present and earnest attention. The City's needs are urgent and legislation is sought for its relief.

The charter of New York City (Sec. 472) provides that: 'The commissioner of water supply, gas and electricity, with the approval of the board of estimate and apportionment, shall have power *within and throughout the state of New York,* to select and to determine all sources of water supply that may be needed for the supply of the public water-works of said city, and for the supply and distribution of water in said city. Any sources of water so selected and determined by him shall be deemed necessary for the public use of the City of New York, and thereupon, with the approval of the board of estimate and apportionment, together with the authority of the board of aldermen expressed by its resolution or ordinance, it shall be lawful for the City of New York to acquire by condemnation any real estate or any interest therein that may be necessary

in order to acquire the sole and exclusive property in such source or sources of water supply, and to wholly extinguish the water rights of any other person or corporation therein, with the right to lay, relay, repair and maintain aqueducts, conduits and water pipes, with the connections and fixtures on the lands of others, and, if necessary, to acquire by condemnation, lands for such purpose in any county or counties through which it may be necessary to pass in conducting such waters to the City of New York; the right to intersect and to direct the flow of water from the lands of riparian owners, and from persons owning or interested in any water, and the right to prevent the flow or drainage of noxious or impure matters from the lands of others into its reservoirs or sources of supply, provided that it shall not have power to acquire or to extinguish the property rights of any person or corporation in or to any water rights that at the time of the initiation of proceedings for condemnation are in actual use for the supply of the waterworks of the people of any other city, town or village of the state, or for the supply and distribution of waters to the people thereof; or which in the opinion of the court on such proceedings may reasonably become necessary for such supply or to take or use the water from any of the canals of the state, any canal reservoirs, or waters used exclusively as feeders for canals, or from any of the streams acquired by the state for supplying the canals with water. * * * The City of New York is authorized to acquire by purchase, lease, or otherwise, lands or water in any other state, or rights, interests, or privileges in, to or over any lands or water in any other state for the purpose of supplying water to the City of New York.'

This sweeping provision has proved inadequate. Change of administration is followed by re-investigation and modification or condemnation of previous plans. Continuity of action can scarcely be expected when the policy of the

department may be altered every two years. Each new commissioner lacks the time, if not the ability, to work out the problem himself. The extension of the present system of supply cannot much longer be carried on by piecemeal — a method which involves the maximum of expenditure and the minimum of result. A continuous body composed of able and interested men, selected without reference to political affiliations can alone, in my judgment, deal adequately with the water question. The power of appointment of such a commission or board should be lodged in the hands of the Mayor, as is demanded by the spirit if not by the letter of the constitutional provision guaranteeing to cities the right to select their own local officers.[b] But to emphasize the proposition that the problem is strictly one of business and not of politics, to encourage the careful and judicious consideration of the proper qualifications for the position by capable counsellors, and to create the utmost confidence on the part of the citizens in the independence and ability of the new commission, it would seem expedient to permit such organizations as the Chamber of Commerce, the Manufacturers' Association and the American Society of Civil Engineers to nominate to the Mayor a list of candidates from which he shall select his appointees.

Such legislation is urged by the city authorities, and I recommend to you its prompt consideration.

But while the legislature is considering the needs of the City of New York it should also consider its duty to the State and to other civil divisions of the State. Under the existing law (City Charter, Sec. 472, above quoted), the commissioner of water supply is authorized to select and condemn sources of water supply throughout the State, subject only to the restriction that he shall not take from another municipality its water supply in actual use or

[b] Const. 1894, art. 10, § 2.

waters which may reasonably become necessary for such supply, or interfere with the canals of the State.

The commissioner of water supply may therefore take water rights anywhere in the State, subject only to the approval of the board of estimate and apportionment and the board of aldermen, and the restrictions above referred to. Other municipalities are not in a position before the court to protect their prospective needs. In condemnation proceedings under this section of the city charter, compensation is paid only for the value of property actually taken. Collateral and consequential damages are not considered. With the taking and destruction of the factory on the water shed the store may lose its customers, the church its worshippers, and the village its population. Values may thus be depreciated without compensation where there is no actual taking of property by the City. Local opposition to the extension of the City's water system into a community is therefore natural and not unjustifiable, and has resulted in special legislation excluding the City of New York from various convenient sources of supply which might be used under proper restrictions.

An abundant supply of water for domestic purposes exists if it is properly conserved and distributed. Millions of gallons run daily to waste. It seems entirely feasible to utilize the sources of supply with economy and with justice to all interests. But in my judgment this requires state supervision. A State commission, which shall examine and pass upon all plans for new sources of water supply or extensions or additions to existing supplies, and which shall be vested with power to approve or disapprove such plans, seems to be needed to protect the general welfare. The members of such commission should have proper scientific and legal qualifications and a reasonably long and secure tenure of office. Its determinations should be subject to speedy judicial review by the Appellate Division of the Supreme Court at the instance of parties aggrieved.

Without indicating further the details of such bills as may be necessary to accomplish the two-fold result of providing the City of New York with water and protecting other localities of the State from injury, I earnestly recommend early action on the part of the Legislature dealing comprehensively with the whole subject. [See note 19.]

FRANK W. HIGGINS."

February 22. To the Assembly:

Veto of a bill entitled "An act to authorize the erection of an addition to present school building by the Palmyra classical union school in school district number one, in the town of Palmyra, and to provide for the payment therefor."

"My objections thereto are that it is unnecessary special legislation. The bill authorizes the board of education of the Palmyra union school to erect an addition to the present school building at a cost of $12,000, to issue bonds to pay for the same, and to levy a tax to pay the principal and interest of said bonds. Section 42 of title 8 of the Consolidated School Law, read in connection with sections 9 and 10 of such title, seems to give the board of education of the Palmyra union school ample power to levy taxes and issue bonds for school purposes when authorized by a majority of the voters of the district.

But it is said that there is a doubt as to the application of these sections of the general school law to Palmyra, by reason of the fact that the Palmyra classical union school is incorporated under a special act Ch. 296, Laws of 1857), which limits the amount to be raised by taxation in any one year. Assuming that such limitation applies, the Legislature should not be called upon to pass a special act whenever a school district desires to build or enlarge a school house. If existing legislation is inadequate to accomplish the purpose, the proper remedy is an amendment of the law, extending the powers of the voters of the school dis-

trict to determine for themselves from time to time the amount of money they shall raise for school purposes. If the Legislature is called upon to act whenever a school district desires to spend ten thousand dollars for school buildings, the fundamental principles of local self-government are violated and the time of the legislature unnecessarily occupied by matters of no general concern.

I have requested the recall of several bills sent to me this session, where the purpose of the proposed act could, in my judgment, be accomplished under existing general laws, or where, in my judgment, general laws should be passed to cover the case.

I return this bill without approval in order to bring to the attention of the legislature the policy adopted by the Executive."

The bill was not passed over the veto.

March 9. To the Legislature:

"*March* 9, 1905.

The State now owns nearly 1,500,000 acres of forest land in the Forest Preserve, title to about 775,000 acres of which was acquired through tax sales, and the remainder at a cost of nearly $2,800,000, directly appropriated for the purchase thereof. The Constitutional Convention of 1894 proposed to the people of the State a new rule to regulate the Forest Preserve of the State, which was adopted by the People and provides that:

'(Art. VII, Section 7.) The lands of the State now owned or hereafter acquired, constituting the Forest Preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.'

This policy is at variance with the previous policy of the

State, which was that forest conservation and utilization of the timber crop should go hand in hand. It absolutely prohibits on State lands the practice of scientific forestry, which in other countries not only improves the forest but also increases its yield of timber, and makes it a source of revenue to the State. It is safe to say that nearly every experienced forester was opposed to the ironclad provision that the forest preserve should be forever kept as 'wild forest lands.'

The full meaning of the restriction against removing timber from the forest preserve contained in the organic law is emphasized by the opinion of Attorney-General Hancock, who said that the prohibition included 'every kind of timber, whether standing, felled by the axe, or thrown down by the forces of nature' (Report of Attorney-General for 1895, p. 89), and also by the opinion of Attorney-General Cunneen, who said that the State had no power to permit the sale and removal of burnt timber on State lands which have been devastated by forest fires, and that 'the expression "wild forest lands" in the Constitution indicated that it was intended to preserve these lands as a wilderness, in which the work of man should not appear.' Nothing is to be taken away, and no trees are to be planted.

The idea uppermost in the minds of the advocates of the constitutional provision above quoted was the protection of the sources of water supply, and the necessity of retaining the rainfall on the surface of the ground.

Many consider the Forest Preserve as a great wilderness park or pleasure ground to be maintained for the benefit of those in search of health or recreation in the primeval forest.

The economic use of the forest as a source of revenue through proper methods of cutting and reproduction, which should in no wise impair its other functions, has been sacrificed to its use for water protection and pleasure.

The policy adopted by the United States government for the care of the Federal Forest reserves is diametrically opposite to that of the State of New York, and has recently been stated as follows:

'Federal Forest reserves are now fixed facts. It is a serious thing to withdraw from settlement, as the government has done, some 63,000,000 acres of land. But when the character of this land is understood, and the purposes the reservations will accomplish are known, it will be generally recognized that the area permanently reserved will serve the public best under forest cover. Its topography and soil unfit it for agriculture, but it is admirably suited to tree growth. Wisely administered, it will continuously furnish an immense timber output, while its influence in conserving the water supply for vast dependent agricultural areas will prove of inestimable value. The reserve laws provide for the sale of timber in small or large quantities to persons both in and outside the reserve. Thus, the forests can be made self-supporting, and through funds created in this way they can be protected from fire and be made more productive and useful. But in making these sales the future of the forest is more considered than the money return from the timber cut. Hence, the sales are strictly guarded by bonded contracts between the individuals and the government. The contracts specify the amount of timber bought and the price to be paid, limit the area and time of cutting, prescribe simple and practical regulations to guard against fire, and cover all essential relations between the contracting parties pending the completion of the contract. No trees can be cut except those previously marked by a government official. Under such contracts millions of board feet of lumber are annually being cut from the reserves, to the improvement of their condition.

It is not the government's purpose to maintain the reserve forests untouched, but to use and develop them. Proper lumbering is as necessary to a productive forest as

protection. Mature or ripe trees should be cut not only for the same reason that wheat or corn is, to save and utilize the product, but also to promote reproduction. Agricultural crops require sowing or planting each year, but forests, properly thinned by cutting, reproduce themselves and furnish a continuous crop. That this work may be effectively accomplished there must be protection from fires and proper conditions for tree growth must be maintained. Important among these conditions is the demand of trees for room and sunlight. The young growth must be neither crowded nor shaded out. Thus, for the best results in reproduction the mature trees should be cut, and the dead and diseased timber should be disposed of as rapidly as possible.'

It is proposed to amend the Constitution by adding to section 7 of article VII a proviso that 'the legislature may authorize the removal of dead timber on burned areas so far as necessary for reforestation, through officers and employees of the State, but not by contract.'

The resolution proposing this amendment was adopted by the legislature in 1904 and referred to the present legislature for its action.

Undoubtedly, burnt timber, if removed at all, should be removed immediately after a fire, before it becomes worthless by decay, except for the purposes of water protection. Experience has taught, however, that if a preference is given to the removal of burnt or down timber, live timber may speedily become burnt or down timber. If by carelessness or design forest fires occur, whereby not only the soft wood trees (which constitute about 30 per cent. of the forest) but also the remaining hard woods are destroyed, more serious injury is done than would result from any proper method of removing the full grown trees. Under the present Constitution, the unlawful removal of burnt timber has recently given rise to numerous actions for trespass, which have been settled by the payment of considerable sums of money. Such trespasses should not be

permitted. The State should either preserve the present imperative rule against the removal of timber, and enforce it rigidly by preventing trespasses, or else adopt a more liberal policy of scientific forestation, which will permit the removal, under proper State supervision, of trees that have attained their growth, as well as burnt and down timber. Lawlessness and encouragement to lawlessness should be suppressed, and all the penalties of the law should be imposed to the utmost upon the timber thief.

It is further proposed to amend the forestry section of the Constitution by permitting the sale of lands outside the limits of the Adirondack Park and the Catskill Park, and the purchase of other lands with the proceeds of such sales. By this process about 75,000 acres of little value as forest lands could be excluded from the preserve, and the proceeds used to purchase valuable forests now within the limits of the preserve.

I hereby recommend:

1. That the proposed constitutional amendment permitting the removal of burnt timber be not submitted to the people.

2. That the forest laws be so amended as to ensure the prevention of trespasses, to compel the prosecution of malicious trespassers, both civilly and criminally, to the full extent of the law, and the seizure by the State of all timber cut or removed by trespassers from State lands, and to prevent the condonation of trespasses.

3. That provision be made for the submission to the people of a constitutional amendment permitting a more scientific delimitation of the forest preserve, so as to permit the sale of lands other than wild forest lands now included in the preserve, and the purchase with the proceeds thereof of other forest lands.[22]

FRANK W. HIGGINS."

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[22] No amendment concerning the forest preserve was proposed at this session, and no additional legislation was enacted relative to timber trepasses.

March 21. To the Assembly:

Veto of a bill relative to the cases in which an action for divorce may be maintained.

"I herewith return without approval, Assembly bill No. 236, entitled 'An Act to amend the code of civil procedure, relative to the cases in which an action in divorce may be maintained.'

My objections thereto are as follows:

Under the existing law (Code of Civil Procedure, Sec. 1756), an action for divorce for adultery may be maintained in the State of New York as follows:

1. Where both parties were residents of the State, when the offence was committed.

2. Where the parties were married within this State.

3. Where the plaintiff was a resident of the State, when the offence was committed, and is a resident thereof, when the action is commenced.

4. Where the offence was committed within the State, and the injured party, when the action is commenced, is a resident of the State.

The proposed amendment adds to section 1756 of the Code of Civil Procedure an additional ground of jurisdiction, to wit:

'5. Where the offence was committed within the State, and the defendant is a resident thereof when the action is commenced.'

This would involve a radical change in the policy of the State governing actions for a divorce. The law as it now stands has, in substance, been in force ever since the adoption of the Revised Statutes, and it would seem that the amendment ought not to prevail unless some controlling reason therefor exists.

It is not clear to my mind that any good purpose would be served by the amendment. Its unquestioned effect would be to open the doors of our courts to non-residents of this State seeking divorces from our residents, and

thereby to increase greatly the number of divorce decrees, already too numerous, and to break down the standard maintained by this State in regard to actions brought to dissolve the marriage tie. It would, in my judgment, be a step backward for the State of New York to leave the high ground it has hitherto occupied in this important matter of domestic morals.

Doubtless, by reason of legal technicalities, there are isolated cases where an innocent party suffers hardship by reason of our existing laws as to jurisdiction, and doubtless a lawyer may argue that the amendment is consistent and proper. Indeed, of all the judges whose opinion I have been able to obtain on this point, but one advised me that, in his judgment, it would be against sound legal policy for me to approve this amendment.

I have, however, come to the conclusion that the plea of legal consistency is of little weight when compared with the duty of maintaining unshaken the present conservative position of the State on the divorce question."

The bill was not passed over the veto.

April 4. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, making an appropriation for the New York State Reformatory at Elmira. The bill was passed, and became Chap. 145, on the 7th of April.

April 6. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill, amending the act providing for an enumeration of the inhabitants of the State. The bill was passed, and became Chap. 144, on the 7th of April.

April 11. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, providing for an additional supply of water for New York. The bill was passed, and became Chap. 724 on the 3d of June.

April 25. To the Senate:

Veto of a bill relating to the protection of persons employed on buildings.

"I herewith return without my approval Senate bill, printed number 1010, entitled 'An act to amend the labor law relating to the protection of persons employed on buildings in cities.'"[23]

My reasons therefor are as follows:

The present law provides for the protection of persons employed on buildings in cities, that if contractors use elevators or hoisting apparatus within a building during progress of construction, for the purpose of lifting materials, the shafts or openings on each floor shall be fenced with a barrier at least eight feet high.

The proposed amendment reduces the height of the barrier to six feet and excepts from the requirement of such a barrier 'the sides used for taking off and putting on materials,' and provides that 'those sides shall be adequately guarded, protected or inclosed.'

The amendment would permit the contractor to do away with the use of barriers on all sides of the shaft, provided all sides were used for taking on or putting off materials and were 'adequately guarded.' Whether his method of guarding the same was 'adequate' would in such cases be a disputed question of fact.

If the present law is oppressive, the amendment should provide a specific substitute describing by what doors or

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[23] This bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 520, on the 17th of May. The bill as passed obviated the Governor's objections by providing that openings in floors for elevator shafts used for hoisting materials should be inclosed or fenced in on all sides by a barrier at least eight feet in height, except on two sides which may be used for taking off or putting on materials, and those sides shall be guarded by an adjustable barrier not less than three feet, nor more than four feet from the floor, and not less than two feet from the edge of such shaft or opening.

gates the side or sides used for taking off and putting on materials should be protected.

Contractors should not be encouraged in carelessness by any relaxation of the laws for the protection of workers."

April 27. To the Senate:

Veto of a bill in relation to proceedings for the condemnation of real property.

"I herewith return without approval Senate bill entitled 'An act to amend the code of civil procedure, in relation to proceedings for the condemnation of real property.'

My objections thereto are that the bill, in my judgment, is a dangerous innovation of at least doubtful constitutionality. At the present time the plaintiff in proceedings to take real property by the right of eminent domain is allowed, under certain conditions, to take possession of the real property to be taken, while the proceedings are pending, 'upon depositing with the court the sum stated in the answer as the value of the property.' (Code Civil Procedure, section 3380.)

Under the proposed amendment the plaintiff may, upon filing his petition, be permitted to enter immediately upon the real property to be taken in all cases, if it appears to the satisfaction of the court that the public interests will be prejudiced by delay, 'upon giving such security as the court may direct.'

The Constitution provides that 'private property shall not be taken for public use, without just compensation.'[c] Lewis on Eminent Domain says (p. 1061) that 'where the Constitution does not provide for possession upon giving security such laws are invalid.' Without passing upon this constitutional question, I think that when a public

[c] Const. 1894, Art. 1, § 6.

service company seeks to take the land of another against his will, the owner should either be permitted to retain possession of his land pending the proceedings, or be protected by a deposit of money equal in amount to his own estimate of the value of the land, and should not be relegated to a bond, subject to the risk that the security may be inadequate or may become worthless."

The bill was not passed over the veto.

April 29. To the Assembly:

Veto of a bill in relation to the celebration of Memorial day in the borough of Richmond.

"I herewith return without approval Assembly bill, entitled 'An act authorizing the board of estimate and apportionment of the city of New York to make appropriations for the celebration of Memorial day in the borough of Richmond.'

My objections thereto are as follows:

This bill provides that the board of estimate and apportionment of the city of New York may appropriate not more than $300, for the celebration of Memorial day in the borough of Richmond. Chapter 332 of the Laws of 1905, entitled 'An act to authorize the expenditure by the city of New York of money for the proper celebration of Memorial day in the year nineteen hundred and five,' provides that the board of estimate and apportionment of the city of New York may appropriate such sum as it may deem advisable to expend in the various boroughs of said city for the proper celebration of Memorial day, and to borrow money without limit as to amount therefor.

Ample provision has therefore been made for the proper celebration of Memorial day in the city of New York, including the borough of Richmond, and no further legislation on that subject is necessary at this session."

The bill was not passed over the veto.

May 1. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the charter of New York relative to the department of street cleaning. The bill was not passed.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the tax law in relation to the taxation of debts secured by mortgages. The bill was passed, and became Chap. 729 on the 3d of June.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to the price of electric current furnished or sold in the city of New York, for light, heat, power or other purposes to consumers other than said city, and providing a penalty for violation. [See certificate of May 4.]

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to the price of electric current furnished or sold to the city of New York, and providing a penalty for violation. [See certificate of May 4.]

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to illuminating gas in the city of New York, and regulating the quality and pressure thereof, and the price to consumers other than said city, and providing a penalty for violation. The bill was not passed. [See certificate of May 4.]

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter, relative to the inspection of illuminating gas and tests thereof. [See certificate of May 4.]

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in re-

lation to the price of illuminating gas furnished or sold to the city of New York, and providing a penalty for violation. The bill was passed, and became Chap. 736 on the 3d of June.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill providing for the manufacture of electricity for New York. The bill was passed and became Chap. 734 on the 3d of June.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill providing for a taxation commission. The bill was not passed.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the liquor tax law in relation to local option. The bill was passed and became Chap. 680 on the 1st of June.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill, providing for a commission of gas and electricity. The bill was passed and became Chap. 737 on the 3d of June.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the tax law in relation to the taxation of debts secured by mortgages. The bill was not passed.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill providing for annual reports by and the examination of accounts of counties, cities of the second and third classes and villages having a population of three thousand or more, the tabulation of comparative statistics as to the cost of maintaining the various branches of government in such municipalities and making an appropriation therefor. The bill was passed and became Chap. 705 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending an act in relation to the traffic in liquors, and for the taxa-

tion and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws. The bill was passed and became Chap. 698 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to the price of electric current furnished or sold to the city of New York, and providing a penalty for violation. Second certificate. The bill was passed and became Chap. 733 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the Greater New York charter relative to the inspection of gas. Second certificate. The bill was passed and became Chap. 735 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to illuminating gas in the city of New York, and regulating the quality and pressure thereof and the price to consumers other than said city, and providing a penalty for violation. Second certificate. The bill was not passed.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill in relation to the price of electric current furnished or sold in the city of New York for light, heat, power or other purposes to consumers other than said city, and providing a penalty for violation. Second certificate. The bill was passed and became Chap. 732 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill relative to the inspection of hotels and the revocation of liquor tax certificates. The bill was passed and became Chap. 697 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill pro-

viding for the annual contribution to the canal debt sinking funds. The bill was passed and became Chap. 509 on the 17th of May.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill,—the supplemental supply bill. The bill was passed and became Chap. 701 on the 3d of June.

May 4. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill in relation to the price of illuminating gas furnished or sold to the city of New York, and providing a penalty for violation. The bill was not passed.

May 4. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 4, 1905.

I respectfully call attention to the portion of my annual message relating to the repeal of the tax imposed on the surplus of savings banks by chapter 117 of the laws of 1901, which reads as follows:*

'The tax on the surplus and undivided profits of savings banks appears in its practical operation to be a tax upon the depositors, and is, therefore, contrary to the long-established policy of the State to exempt from taxation the savings of those who make use of these banks. The amount of the tax is charged against the current earnings of the bank and is not taken from the surplus, and it is claimed that the bank is, therefore, unable to pay the same rates of interest to depositors as it would if the tax were not imposed. A reduction of the interest on these accounts is a hardship to those affected thereby, and I recommend the repeal of this tax. The receipts from this source for the past fiscal year were $720,000.00, and the revenue thus lost must be made up; but at the same time justice

* *Ante*, p. 721.

seems to demand that this tax be abolished and that some more equitable method of raising the amount be resorted to.'

A bill to carry into effect this recommendation, introduced on the first day of the legislative session, still remains in committee. With the unexpected and increasing demands for the payment of claims against the State which have been held by the courts to be justly due, with the equally unexpected curtailment of revenue, also to judicial decisions, and with the unavoidable extraordinary expenses of this session, doubt has arisen in the minds of some as to the wisdom of surrendering any source of present revenue. It has been urged that the Empire State cannot be either penurious or niggardly in the exercise of its public functions; that it should not in honor and good faith seek to hinder nor delay its creditors and that it cannot with prudence release the savings banks from the burden of this tax at the present time.

But pledges to the people must faithfully be kept and cannot safely be ignored on the specious plea of necessity. The Republican party is committed to this repeal by the repeated public declarations of its candidates. It cannot afford to refuse to do its duty in this regard. The reasons for relieving the savings banks from this tax as a matter of justice, are more cogent now than at the opening of the session.

I therefore recommend that the Legislature take immediate favorable action on the bill to repeal this tax. [See note 1.]

FRANK W. HIGGINS."

May 5. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the Election Law by adding a new article, 9, relative to campaign contributions. The bill was not passed at this

session, but a bill on this subject was passed in 1906. [See Chap. 502.]

May 5. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

April 4.

Memorandum filed with Assembly bill, Chap. 132, Utica Court House bill.

"I have this day signed Mr. Gates' Utica courthouse bill.

The sole purpose of this bill is to increase from $350,000 to $870,000, the amount authorized to be expended by virtue of chapter 89 of the laws of 1901, by a board of commissioners named in that act, for the acquisition of a site and the erection thereon and furnishing of a suitable building for a new courthouse in the city of Utica.

The Court of Appeals in *People ex rel. the Board of Commissioners v. Board of Supervisors of Oneida county* (170 N. Y. 105), held that the original act violated no constitutional guarantee of local home rule. Judge Haight, writing the opinion of the court, said that 'the legislature has the power to provide buildings and courtrooms in which the courts of the State may hold sessions and dispose of the civil and criminal cases that may be brought to trial. * * * It may be done through such agents of the State as the legislature shall provide.'

I heartily approve the general principle that the regulation of purely local affairs of cities or counties, or other civil divisions of the State, should, as a rule, be left to their people or their local officers. The State, however, necessarily retains the power to act through its own agents in providing localized facilities for the exercise of State functions at the expense of the locality chiefly concerned. It has already exercised that power by providing for the construction of the new courthouse.

As I am satisfied that a proper site cannot be acquired and a suitable building, as described in the original act, completed ready for use for the sum first named, and as this amendment has strong local support, I have reached the conclusion that I am not justified in nullifying the purpose of the law, at this time, by returning the bill without my approval."

April 19.

Memorandum filed with Senate bill, Chap. 241, taxing transfers of stock — Approved.

"I have given my approval to the above bill. It imposes a tax of two dollars per hundred shares on transfers of corporate shares or two cents on each one hundred dollars par value thereof. The tax is moderate in amount, and similar taxes are levied in other countries, and were levied in the United States under the war revenue tax law. It has been argued with much force, and a great deal of truth, that the business of dealing in corporate shares is necessary and useful. It has been asserted that even as small a tax as that imposed by this act must either suppress the business almost entirely or drive it out of the State. Experience with taxes of this sort on the continent of Europe does not seem to indicate that the business of stock brokers has been suppressed or even seriously checked by them.

It may be said in favor of the tax that there is perhaps no other sort of capital which at present escapes taxation as completely as that employed in stock transactions. It is generally conceded that the imposition of a like tax by Congress during the Spanish war did not drive business out of the United States and did not cause great hardship to those engaged in the business of dealing in stocks.

A State tax of this kind is undoubtedly to some degree experimental in its character. If its results are those

which we have every reason to expect, it will produce a substantial revenue without seriously burdening the business interests and financial welfare of the State. If on the other hand, it should prove that the bill is a disappointment in the way of producing revenue, or inimical to the welfare of the State, the deliberations and recommendations of the commission to consider revenue and taxation, which I trust will be provided for at the present session of the Legislature, will suggest a more equitable and productive substitute."

THIRTY DAY BILLS.

May 22.

Veto of an Assembly bill entitled "An act to amend the tax law in relation to taxable transfers of property."

"This bill amends section 230 of the tax law, in relation to the appointment of appraisers, stenographers, etc.; and section 234 of the same law, in relation to surrogates and their assistants.

Chapter 368 of the laws of 1905, approved May 4th, amending the tax law generally in relation to taxable transfers, having become a law, this bill cannot be approved without destroying the provisions of that law which are inconsistent with the provisions of this bill.

Section 230 in the law of 1905 has to do with proceedings by an appraiser, and section 234 deals with surrogates' assistants in *New York* and other counties."

May 23.

Veto of an Assembly bill entitled "An act for the relief of Adelia Queenie Barker."

"This bill presents an astonishing proposition, but the most astonishing thing about it is that it passed both houses unnoticed and without opposition or discussion. It is an insult to every faithful wife and to womanhood itself.

The bill recites that Adelia Queenie is the bastard infant child of Charles Bell Barker and Adelia Gertrude Stringer, and enacts that said child is thereby made the legitimate child of its said parents in all respects the same as if said child had been born in lawful wedlock. The father at the time of the birth of the child had and now has a lawful wife living. He and his paramour, with brazen impudence and utter disregard of the rights of the lawful wife and the rules of morality, unite in a petition to the Legislature to legitimatize the issue of their lawless love. If this bill should be approved, a legal status would be given to a semi-polygamous relation and concubinage would become an honorable estate."

May 23.

Veto of an Assembly bill entitled "An act to amend chapter seven hundred and six of the laws of nineteen hundred and one, entitled 'An act to make the office of register of the county of Kings a salaried office and regulating the management of said office,' as amended by chapter six hundred and ninety-nine of the laws of nineteen hundred and four, relating to additional assistants, clerks, employees, or subordinates in said office and fixing salaries of assistants, clerks, employees, or subordinates in said office;" and a

Senate bill entitled "An act to amend chapter seven hundred and five of the laws of nineteen hundred and one, entitled 'An act to make the office of sheriff of the county of Kings a salaried office, and regulating the management of said office,' relative to the number of certain employees or subordinates."

"These bills increase the number of employees, and raise salaries, in the offices of the sheriff and register of Kings county. The total increase of salaries in the register's bill is $45,250 per annum. The total increase of salaries in the sheriff's bill is $19,100 per annum. The total increase in both offices is $64,350 per annum.

In my opinion it is not the proper function of the Legislature to fix the number and salaries of subordinates in county offices. The local authorities should have the power to regulate these matters. Whether there should be fifty copyists or thirty-five in the register's office, and whether there should be nine cleaners or three in the sheriff's office, are questions best decided by the board of estimate and apportionment after a hearing. Before these offices were made salaried offices they were reputed to be highly remunerative. If the Legislature continues to multiply places and increase salaries, they will cease to be self-supporting."

May 25.

Memorandum filed with Assembly bill, Chap. 611, entitled "An act to amend the railroad law, in relation to the inspection of locomotive boilers"—Approved.

" This is a bill to provide for the inspection of railroad locomotive steam boilers under the supervision of a state inspector.

State inspectors test the boilers of all steam vessels navigating the waters within the jurisdiction of the state, excepting vessels which are subject to inspection under the strict inspection laws of the United States. The Labor Law provides for the inspection of boilers in factories and mines. The Greater New York charter provides for the inspection of steam boilers in the City of New York. The strength and security of locomotive boilers should also be tested and certified to at reasonable intervals, in order to protect the traveling public and the firemen and engineers. Many accidents, of which the engineers and firemen are almost invariably the victims, have resulted from explosion of locomotive boilers. This bill has the support of the brotherhoods of locomotive engineers and firemen.

Reasonable requests for legislation calculated to reduce the risks of necessarily hazardous employments are entitled to consideration."

May 29.

Veto of a Senate bill entitled "An act to amend chapter five hundred and twenty-three of the laws of eighteen hundred and ninety, entitled 'An act in relation to the office of sheriff of the City and County of New York,' relative to salaries."

"This bill increases the salary of the under-sheriff of the County and City of New York from $5,000 to $6,000 per annum, and raises the salaries of twelve assistant deputy sheriffs from $1,000 to $1,500 per year, making a total annual increase of $7,000 in the expenses of the office.

This is not a city bill, although the City of New York is the paymaster. It does not require the approval of the city. It is therefore necessary that I should act with due caution before compelling the city to pay increased salaries. As it does not appear that competent men cannot be retained at the present salaries, I am of the opinion that the interests of State, county and city do not require me to approve the measure."

May 29.

Veto filed with bills authorizing the payment of persons appointed to public office or employment in violation of the Civil Service Law.

"Many bills have come to my hands which authorize persons who have been appointed to or employed in public positions in violation of the Civil Service Law to go before the Court of Claims, or the Comptroller of the City of New York, or the Board of Estimate and Apportionment, to obtain the audit and allowance of claims for services rendered. I have disapproved such bills on the ground,

first, that the appointments were made in violation of law, and that the law cannot be sustained if persons so appointed are to be allowed to collect from the State, or the civil divisions thereof, for services rendered by them under such illegal appointment; and secondly, because all such persons have an adequate remedy at law. The Civil Service Law, section 7, provides as follows:

'Any person employed or appointed contrary to the provisions of this act or of the rules and regulations established thereunder, shall be paid by the officer or officers so employing or appointing, or attempting to employ or appoint him, the compensation agreed upon for any services performed under such appointment or employment, or in case no compensation is agreed upon, the actual value of such services, and any expenses incurred in connection therewith, and shall have a cause of action against such officer or officers or any of them for such sum or sums and for the costs of the action. No public officer shall be reimbursed by the State or any of its civil divisions for any sums so paid or recovered in any such action.' ''

June 1.

Veto of an Assembly bill entitled "An act to enable the county of Erie and the town of Grand Island to construct a bridge from the town of Grand Island across the east branch of Niagara River to the mainland, and to issue bonds therefor."

'' Section 9 of this bill provides that ' The improvements provided for in the foregoing sections of this act, excepting section two, shall not be commenced, nor shall bonds be issued therefor, nor shall any liability thereunder be incurred by the county of Erie or the town of Grand Island, unless at a general election the proposition whether the improvement hereinbefore provided for shall be made and such bonds issued shall have been submitted to the electors of the county of Erie and receive a majority vote of the

electors of said county voting on said proposition, who are qualified to vote at a general election. Notice that the same will be so submitted shall be given by the county clerk of the county of Erie in the same manner that notice of the general election is given. The county clerk of Erie county shall provide upon the official ballot for the next general election for voting for and against the building of a bridge under this act. The result of such election shall be canvassed by the board of supervisors and declared in the same manner as the result of an election of the state and county officers.'

Chapter 643 of the laws of 1905, amending the election law relative to the duties of the Commissioner of Elections of the County of Erie, transfers from the County Clerk of Erie County to the Commissioner of Elections of said county the duty of giving notice of elections, and of providing ballots therefor. This bill should conform to the general law. In its present form it is defective, and I am precluded from considering the bill on its merits."

June 1.

Veto filed with private claim bills waiving the statute of limitations or the provisions of the canal law relative to damages resulting from navigation of the canals.

" The Code of Civil Procedure limits the jurisdiction of the Court of Claims in cases of private claims against the State to such as have accrued within two years before the claim is filed.

The Canal Act provides that claims shall not be allowed for damages resulting from navigation of the canals.

These bills empower the persons named therein to sue the State, while every other citizen is obliged to comply with the general law. It seems inexpedient to legislate for individuals in these matters. If the general law is too severe, it should be so amended as to enable all of a class to avail themselves of its provisions."

June 1.

Veto of a Senate bill entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo' in relation to the position of storekeeper in the fire department of said city."

"The charter of the City of Buffalo provides that the Board of Fire Commissioners may appoint a chief engineer and such subordinates as it may deem necessary for the efficient working of the department, and that it shall, subject to the approval of the Common Council, fix the salaries of all its employees.

This bill compels the employment of 'a storekeeper whose salary shall be $1,400 per annum.' I am unable to see any controlling reason for this insistence on the part of the State that the Buffalo Fire Department should have a storekeeper, and should pay him $1,400. If a storekeeper is necessary and if $1,400 is a proper compensation for the position, the Fire Commissioners and the Common Council have full power under the existing law to do all that this bill requires."

June 2.

Veto of a Senate bill entitled "An act to amend section twenty-five of the agricultural law, entitled 'An act in relation to agriculture, constituting articles one, two, three, four and five of chapter thirty-three of the general laws,' relative to condensed milk."

"Either the title of this bill is misleading or else the bill itself is defectively drafted. It does not, as suggested by the title, amend the agricultural law relative to condensed milk alone, but it establishes rules of evidence and procedure governing the possession and seizure of any article of food, the sale of which is prohibited by the agricultural law. These rules are in my opinion extraordina-

rily and unnecessarily arbitrary. They shift the burden of proof from the State to the accused and permit the trial of serious charges upon affidavits. I doubt that the procedure would be sustained as 'due process of law.'"[a]

June 2.

Veto of a Senate bill entitled "An act creating a commission with power to agree upon a site and general plans of, and to contract for the location and building of a union railroad passenger station, yard, and therewith connected facilities and approaches thereto in the city of Buffalo, and tributary thereto to lease or sell and convey lands belonging to said city, to abandon and close now existing, and establish and open new, and change the location, width or grade of and otherwise improve docks, wharves, parks, streets and public places, and for these purposes to acquire lands and their appurtenances by condemnation proceedings or otherwise."

"One insuperable objection exists to this bill which in my judgment renders unnecessary the further consideration of the measure. The Constitution, (Art. VIII, section 10), provides that 'no * * * city * * * shall hereafter give any money or property, or loan its money or credit to or in aid of any * * * corporation; * * * nor shall any * * * city * * * be allowed to incur any indebtedness except for * * * city * * * purposes.' This provision was incorporated in the Constitution in 1874 to correct the abuses that had arisen from the practice of bonding municipalities in aid of railroad corporations in exchange for stock issued by such corporations. Great benefits were expected from municipal aid to railroads; disappointed hopes and grievous burdens were the usual results.

This bill renders possible the granting of city property and the incurring of city indebtedness to an unlimited

[a] Const. 1894, art. 1, § 6.

amount in aid of the railroads that enter the City of Buffalo. It seems to me that it practically nullifies the constitutional restriction. The State has ample power to compel the railroads to construct a union station at their own expense if the general welfare of the people demands it. It does not appear that private enterprise and capital are unequal to this undertaking. It does not appear that any considerations exist that demand the relaxation of the rule of strict construction of plain constitutional limitations. I think that the City of Buffalo should not be permitted to incur obligations binding on the city to an unlimited amount for the construction of a railroad station."

June 2.

Veto filed with escheat bills not approved.

"I have not approved the greater number of these bills either because the general law affords adequate relief, because the bills did not receive a two-thirds vote as required by the Constitution,[e] or because the party seeking the release of the State's interest in the lands showed no substantial equity.

All escheat bills are based on a wrong principle. If a man dies leaving resident heirs, the State collects a transfer tax from his estate. If he dies without heirs and the State takes title to his real property, some more or less remote connection of the deceased endeavors to obtain the release of the State's interest by special act. If he succeeds, the State not only loses the transfer tax but also bears the cost of giving away its own property. It is estimated that the expense of printing and passing a bill averages $750. This is poor business on the part of the State.

The commissioners of the land office should have ample power to deal with all such cases, and no special escheat

[e] Const. 1894, Art. 3, § 20.

bill should be sent to the Governor unless the petitioner pays the cost, tax and all necessary expenses. I have followed precedent in approving a few such bills, but I think the practice should be changed."

June 2.

Veto of a Senate bill entitled "An act to amend subdivision two of section twenty-four of chapter one hundred and twelve of the laws of eighteen hundred and ninety-six, the liquor tax law, as amended by chapter three hundred and twelve of the laws of eighteen hundred and ninety-seven and as amended by chapter four hundred and eighty-five of the laws of nineteen hundred and four, relating to places in which the traffic in liquor shall not be permitted."

"This bill, although general in terms, is intended to permit traffic in liquor to be carried on at the Gotham Hotel in the City of New York within 200 feet of the Fifth Avenue Presbyterian Church, without the consent and against the opposition of the church society. It is therefore a special exception to the general rule prohibiting the traffic in liquor to be carried on in any place within the State within 200 feet of a church without the consent of the church. It is probable that this hotel will in no degree disturb the peace and good order of the neighborhood. It is, however, in my judgment, unwise to whittle away the safeguards contained in the general law by special exemptions. Last year an amendment was obtained which would have enabled this hotel to do business with the consent of the church society. It was expected that this provision would be sufficient, but the church withholds its consent, and now another effort is made to twist the law to meet the case. No substantial distinction exists between a hotel containing 199 rooms or less and a hotel containing 200 rooms or more. The size of a hotel is no guarantee of its

orderly character. If that were so, it would follow that the larger the hotel the more desirable it would be as a neighbor to a church.

For these reasons, I disapprove the bill as being unjustifiable special legislation."

June 3.

Memorandum filed with Senate bill, Chap. 697, entitled "An act relative to the inspection of hotels and the revocation of liquor tax certificates"; and

Senate bill, Chap. 698, entitled "An act to amend 'An act in relation to the traffic in liquors, and for the taxation and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws.'"

"These bills are in a sense companion measures. The first provides for the year 1905, and the second is general in its character, but will not operate to any great extent during the year 1905, as liquor tax certificates are issued on the first day of May.

The purpose of those bills is to compel the so-called Raines Law hotels to comply with the provisions of the laws, ordinances, rules and regulations of the State and locality relating to the fireproof construction of hotels, and the laws pertaining to the building and health departments of the State and locality. The proceeding under the Ambler bill is summary in its character, but it can harm no one who is carrying on his business properly under existing law. The provisions of the Raines bill are for the purpose of preventing evasions of the law by requiring a proper inspection of the applicant's hotel before a liquor tax certificate is issued to him.

These bills are in the interest of morality, and are supported by organizations and citizens interested in removing the disgrace that attaches to the name of the so-called Raines Law hotel. If I were not satisfied of the constitu-

tionality of the Ambler bill, it would not receive my approval. It is no more drastic than are prohibitory liquor laws, the constitutionality of which has been upheld by the Supreme Court of the United States.[f] As a general rule, it would be preferable to have the proper inspection made before the certificate is granted, rather than to take away the right to traffic in liquors after the granting of the certificate, because the certificate should not have been granted in the first instance. For that reason the Ambler bill is temporary in its character only, and will be superseded by the Raines bill at the end of the year."

June 3.

Memorandum filed with Assembly bill, Chap. 699, entitled "An act making appropriations for the support of government."

"The total of general appropriations, exclusive of canal sinking fund and barge canal appropriations, passed by the legislature this year was....	$27,184,474 00
I have disapproved bills and items to the amount of.....	572,370 67
Leaving a total of.....	$26,612,103 33

As compared with..... $26,467,678 00 for 1904.

Again the direct tax is kept at the lowest point permitted by the Constitution and the barge canal act adopted by the people, being 13/100 of a mill for the old canal debt sinking fund and 24/1000 of a mill for the barge canal debt sinking fund.[g]

The apparent increase in appropriations is not due to extravagance on the part of the present legislature. Such

[f] Bartemeyer v. Iowa, (1874) 18 Wall. 129; Mugler v. Kansas, (1887) 123 U. S. 623.

[g] Const. 1894, Art. 7, § 4; see Am. 1905.

increase is due rather to a desire to meet the obligations of the State and to make adequate provision for the established fixed charges of government.

Owing to the enactment a year ago, of a law providing for increased wages of employes in State hospitals and owing to a deficiency in maintenance appropriations made for such institutions during the last fiscal year, a deficiency existed which it was necessary to provide for in the appropriations of this year, but which properly is not chargeable to this year's expenditures, amounting to $448,640.77.

Owing to the failure to provide in 1904 a sufficient amount to pay refunds of liquor tax certificates, we have been obliged to appropriate the sum of $315,000 for that purpose.

Owing to judgments obtained in December, 1904, against the State for refunds of taxes to counties that were bonded for railroad purposes, under the decision of the Court of Appeals in the Ulster county case, we have been compelled to appropriate $785,000 to pay a sum that in no sense is chargeable upon the expenses of government for this year.[h]

We have also had, in the way of unusual and abnormal expenses, $300,000 for the State enumeration and $115,000 for the loss by fire at Elmira reformatory; making in all about $2,000,000 of appropriations that are not properly chargeable on this year's expenditures.

By deducting this sum from the total net appropriations it will be noted that the actual net expenses of government, regardless of the large natural increase in the number of inmates of our insane asylums and other public institutions, have been largely decreased.

The record of the year has been a highly creditable one. A few meritorious measures failed of passage, but no vicious measure has become law. On the other hand, the liquor tax law, the election law, the labor law and the

[h] County of Ulster v. State of New York, (1904) 177 N. Y. 189.

banking law have been substantially strengthened by wholesome amendments; the claims of the teachers, firemen and policemen in cities have been recognized by helpful legislation; the forests of the State have been protected; the State hospitals for the insane have been again placed under the control of local boards of managers; provision has been made for the inspection of locomotive boilers; the solution of the rapid transit problem in New York city has been aided by the enactment of proper laws; gas and electric companies have been placed under State control and much has been done to curb the exactions of the lighting monopoly in New York city. Every demand for proper reform in the interests of morality, law and order has met a response and no interest of the people has been neglected. I do not recall a session of the legislature which has been more fruitful of good laws or which has produced fewer objectionable ones. The burdens of taxation have not been increased by reason of any avoidable expenditure of money. Provision has been made to meet the deficiencies of previous years and the extraordinary expenses of this year by strengthening the present tax laws and by taxing transfers of stock, rather than by raising the rate of taxation on property or resorting again to the home, the farm and the factory.

If no deficiencies had existed and no unusual expenses had been imperatively demanded, the record for economy would be plainly apparent. I am satisfied with the record, and I believe that the people will give it their approval."

June 3.

Veto of item in the appropriation bill, Chap. 699.

"LUNACY COMMISSION.

Page 78. 'For the employment of clergymen at the Willard state hospital, one thousand dollars ($1,000), or so much thereof as may be necessary, to be paid under the direction of the state commission in lunacy.'

The employment of clergymen at all the state hospitals is provided for out of the maintenance fund. There is no reason why one hospital should be specifically mentioned to the exclusion of all others in this regard."

June 3.

Veto of items in the supply bill, Chap. 700.

"JUDICIARY (Libraries).

Page 7. 'For the David L. Follett sixth judicial* library, for the purchase of additional reports, catalogue and insurance, four hundred dollars ($400), or so much thereof as may be necessary.'

COMPTROLLER.

Page 13. 'For the comptroller, eighty-six dollars and fifty-five cents ($86.55), or so much thereof as may be necessary, to reimburse the M. F. Wostergron company for taxes erroneously assessed and paid.'

Page 14. 'For the comptroller, seven hundred fifteen dollars and thirty-seven cents ($715.37), or so much thereof as may be necessary, for the payment of services and disbursements in full rendered by Frederick G. Mather in preparation of papers in connection with the war of eighteen hundred and twelve.'

THE ATTORNEY GENERAL.

Page 21. 'For additional salary of assistant from April first to September thirtieth, one hundred dollars ($100).'

'Second grade: One employee, for salary from April first to September thirtieth, two hundred ten dollars ($210).'

'For Joseph G. Dudley, for legal services in connection with the investigation in the matter of the German Bank of Buffalo, five hundred dollars ($500).'

* So in bill.

Page 22. 'For Martin McHale, for expert services rendered in the matter of the litigation of the state of New York with the Consolidated gas company, five hundred dollars ($500), or so much thereof as may be necessary.'

'For expenses and disbursements of the deputy attorney-general having charge of actions and proceedings in the court of claims while in the discharge of his duties, in lieu of and in full of such expenses from and including the first day of January, nineteen hundred five, to and including September thirtieth, nineteen hundred six, one thousand seven hundred fifty dollars ($1,750), payable monthly.

STATE ENGINEER AND SURVEYOR.

Page 22. "For the state engineer and surveyor for the purpose of continuing to coöperate with the United States geological survey in surveying and mapping the state of New York in the manner defined by chapter two hundred nineteen, laws of eighteen hundred ninety-eight, twenty thousand dollars ($20,000), or so much thereof as may be necessary.'

Page 23. 'For the reimbursement of the town of Irondequoit, Monroe county, for the expense heretofore charged upon said town for the reconstruction of the improvement of Hudson avenue in said town during the year nineteen hundred two, under chapter one hundred fifteen, laws of eighteen hundred ninety-eight, one thousand nine hundred five dollars and ninety-four cents ($1,905.94), or so much thereof as may be necessary.

'For the state engineer and surveyor for coöperation with the United States geological survey in hydrographic work connected with the measurements of volume of streams and flow of water in the state of New York, for the purpose of determining the water supply available for canals and for potable and domestic uses and the development of water power, fifteen hundred dollars ($1,500) or so much thereof as may be necessary.'

Page 24. 'For the state engineer and surveyor for traveling expenses and disbursements incurred in making examinations, surveys and maps for restoring and placing monuments on the boundary lines of the state and for expenses incurred for labor and material in procuring and placing such monuments pursuant to chapter four hundred twenty-one, laws of eighteen hundred eighty-seven, as amended by chapter six hundred seventy-eight, laws of eighteen hundred ninety-two, five thousand five hundred dollars ($5,500), or so much thereof as may be necessary.'

Page 26. 'For O. C. Breed, for services performed and expenses incurred by him, in making investigations and obtaining evidence in respect to claims against the state on account of the Phœnix dam, two hundred seventy-four dollars and twenty-five cents ($274.25), to be paid on the certificate of the state engineer and surveyor.'

'For the state engineer and surveyor, for surveying and preparing plans and estimates of the work necessary to make the waters between Great South bay and Shinnecock bay navigable for boats of six feet draft which plans and estimates shall be included in the next annual report of the state engineer and surveyor to the Legislature, two thousand five hundred dollars ($2,500), or so much thereof as may be necessary.

DEPARTMENT OF AGRICULTURE.

Page 31. 'For the commissioner of agriculture, for additional expenses on account of increased work made necessary by amendments to the agricultural law, five thousand dollars ($5,000), or so much thereof as may be necessary.'

FOREST, FISH AND GAME COMMISSION.

Page 35. 'For expenses of making surveys, witness, court, and attorney's fees in protecting the state's title and interest in state lands in the forest preserve, three thou-

sand dollars ($3,000), or so much thereof as may be necessary.'

Page 37. ' For the purpose of constructing a fishway in the Delaware river over the Deposit electric company's dam, fifteen hundred dollars ($1,500), or so much thereof as may be necessary, said fishway to be constructed under plans prepared and approved by the state engineer and surveyor, and under his supervision.'

' For the construction of a fishway in the Chenango river over the dam at or near the village of Port Dickinson, said fishway to be constructed under the direction and supervision of the forest, fish and game commissioner, one thousand two hundred dollars ($1200), or so much thereof as may be necessary.'

' For the purpose of enabling the forest, fish and game commission of the state to establish a trout hatchery in the town of Ellington, in the county of Chautauqua, if the construction and establishment thereof is by said commission deemed advisable, the sum of five thousand dollars ($5,000), or so much thereof as may be necessary.'

DEPARTMENT OF HEALTH.

Page 38, lines 7 and 8, ' and for special equipment and expenses, three thousand dollars ($3,000).'

' For use in connection with epidemics of smallpox and other contagious or infectious diseases in the several municipalities of the state, five thousand dollars ($5,000), or so much thereof as may be necessary.'

DEPARTMENT OF LABOR.

Page 39. ' For the salary of expert examiner of machinery from January twenty-fifth to June first, 1905, four hundred twenty dollars ($420) for services to said June first, from and after which date said office is hereby abolished.'

NATIONAL GUARD.

Page 44. 'For the payment of the paving tax heretofore levied by the village of Oneonta, for the paving of Fairview and Academy streets in front of the state armory, nine hundred twenty-five dollars ($925), or so much thereof as may be necessary, to be paid upon the audit of the armory commission.'

NIAGARA RESERVATION.

Page 44. 'The sum of seven hundred forty-six dollars and seventy-four cents (re. $746.74), or so much thereof as may be necessary, being the unexpended balances of appropriations made in nineteen hundred three, for the survey of road to Lake Ontario and for alteration to inclined railway building, is hereby reappropriated for the purchase of labor saving machinery for the state reservation at Niagara.'

DEPARTMENT OF PUBLIC BUILDINGS.

Page 48. 'For fitting up the rooms on the fourth floor of the capitol formerly used by the superintendent of the Adirondack survey, known as numbers four hundred forty-two and four hundred forty-three, with heating, lighting, plumbing and other office facilities, fixtures and appurtenances, in the discretion of the superintendent of public buildings, three thousand dollars ($3,000), or so much thereof as may be necessary.'

DEPARTMENT OF PUBLIC WORKS.

Page 51. 'For the construction of a dike or dikes along the banks of the Beaverkill and Delaware river, at a point opposite the juncture of such streams with the east branch of the Delaware river, in the town of Hancock, county of Delaware, of such nature and for such a distance as to prevent the overflow of lands and the consequent damage

to property in such town and the threatened injury to the health of the inhabitants thereof, and the removal of obstructions from such streams at or near such point, eight thousand dollars ($8,000), or so much thereof as may be necessary. The work of such construction shall be done by the superintendent of public works, or under his direction and control, in accordance with plans, specifications and estimates to be prepared by the state engineer and surveyor. No part of such money shall be available for the purposes specified, until the owners of the lands upon which such dike or dikes are to be built shall have filed with the superintendent of public works, an instrument in writing, granting to the state the right to erect and forever maintain such dike or dikes, and releasing the state from all damages which may have accrued up to the date of the execution thereof by reason of the overflow of such lands; and nothing herein shall be construed as a recognition or assumption of any liability on the part of the state for any damages done by the overflow of such rivers.'

Page 52. 'For abating the nuisance caused by the Chemung canal and for that purpose to drain and clean out Catherine creek at Pine valley and Millport in the town of Veteran, Chemung county, three thousand dollars ($3,000), or so much thereof as may be necessary.'

'For the repair of the state dam on the Grasse river and the improvement of the stream, six thousand dollars ($6,000), or so much thereof as may be necessary.'

'For widening the embankment and raising portions of the roadway in Chautauqua county, leading from the Cattaraugus Indian reservation to the village of Irving, sufficient to make said roadway secure against floods, five thousand dollars ($5,000), or so much thereof as may be necessary.'

'For rebuilding the dam across the Great Chazy river at Chazy lake, authorized by chapter two hundred eighty-nine, laws of eighteen hundred sixty-eight, five thousand dollars ($5,000), or so much thereof as may be necessary.'

Page 53. 'For cleaning out, deepening and improving the channels of the creeks, water courses and state ditches and their tributaries, located in the north part of the town of Amherst, and in the town of Clarence, Erie county, that flow and drain into Tonawanda and Ellicott creeks in said town, and include Black creek from Wolcottsburg in the town of Clarence to where it empties into Ransom creek in the town of Amherst, and to put in order and repair the said ditches which were constructed between said Tonawanda and Ellicott creeks in said town of Amherst in order to drain the lands and highways in the towns aforesaid, and which are overflowed by back water occasioned by the erection of a state dam for canal purposes, five thousand dollars ($5,000), or so much thereof as may be necessary.'

'For the construction of an aqueduct with steel or timber trunk in place of the present double arch culvert for the passage of the waters of Oneida creek under the Erie canal at Durhamville, on the line between the counties of Madison and Oneida, according to plans and specifications therefor to be prepared by the state engineer and surveyor, sixty thousand dollars ($60,000), or so much thereof as may be necessary, to be paid by the state treasurer, upon the warrant of the comptroller to the order of the superintendent of public works; no part of said money shall be available except for necessary advertising, engineering, surveys and the necessary plans until a contract or contracts in due form shall have been entered into between the state and some responsible person, firm or corporations for the completion of said work at a cost within the amount hereby appropriated; the above sum of sixty thousand dollars shall be refunded to the general fund by the canal fund from the appropriation made by chapter one hundred forty-seven, laws of nineteen hundred three, as soon as said appropriation shall become available, and the amount so refunded shall become a part of the general fund.'

Page 54. 'For repairs to the public highway in the town of Fowler, Saint Lawrence county, along and near the Oswegatchie river in said town, two thousand dollars ($2,000), or so much thereof as may be necessary.'

'For the construction of a breakwater in the Black river in the town of Croghan, Lewis county, at a point about two and one-half miles east of the village of Carthage, for the protection of the so-called river road, and for the erection of a suitable guard rail along said road, and for repairing damage to said road resulting from the wash from said Black river, three thousand dollars ($3,000), or so much thereof as may be necessary.'

'For lamps, and the care and maintenance of same, for lighting the east shore of Cayuga lake, between the high and low water mark on the easterly end of Long point and on the westerly end of Lake Ridge point, and for a new lamp in the lighthouse at Cayuga on said lake, two hundred ten dollars ($210), or so much thereof as may be necessary.'

Page 55. 'For the purpose of making a cut-off at the junction of the abandoned Chenango canal with Baldwin's creek in the village of Oxford, Chenango county, and restoring to its original channel the waters of said Baldwin's creek and conducting the same for a distance of about sixteen rods into the Chenango river and constructing a culvert in connection with said work, upon plans and specifications to be prepared by the state engineer and surveyor, four thousand dollars ($4,000), or so much thereof as may be necessary.'

'For cleaning out and improving the state dam erected pursuant to chapter six hundred twenty-one, laws of eighteen hundred ninety-eight, at the junction of the streams known as the Basha's kill and the Pine kill, in the town of Mamakating, Sullivan county, and in improving the channel of the Basha's kill at said junction, five hundred dollars ($500), or so much thereof as may be necessary.'

Page 56. 'For the purpose of removing dead and floating timber and cleaning and rendering safe Saranac lake and Oseetah lake between the state dam and Lake Flower, township twenty-four, Franklin county, fifteen thousand dollars ($15,000), or so much thereof as may be necessary.

QUARANTINE.

Page 57. 'For the commissioners of quarantine, for deficiency in appropriation for care and maintenance, because of necessary repairs at Swinburne and Hoffman islands, two thousand five hundred dollars ($2,500), or so much thereof as may be necessary.'

'For repairs to steamers of the health officer of the port of New York, which expense was necessarily incurred and paid on account of an emergency arising duly certified by the health officer of the port of New York and approved by the governor, attorney-general and comptroller, under the provisions of section eighty-three of the public health law, two thousand four hundred seven dollars ($2,407), or so much thereof as may be necessary.'

'For the payment of the following expenses of the health officer of the port of New York, namely:

'For plumbing office, laboratory and houses, six hundred forty-four dollars and sixty-nine cents ($644.69).

Page 58. 'For mason work for office, laboratory and houses, four hundred ninety-seven dollars and eighty-five cents ($497.85).'

'For new heating apparatus for houses of deputy health officers, four hundred eighty-five dollars and fifty cents ($485.50).'

'For gas apparatus for the supply of illuminating gas for department, fifteen hundred eighty-eight dollars and eighty cents ($1,588.80).'

MISCELLANEOUS.

Page 69. 'For the salary classification commission, for necessary disbursement of railway and hotel expenses,

clerical and stenographer's services, six hundred dollars ($600), or so much thereof as may be necessary, payable by the treasurer upon the warrant of the comptroller upon verified itemized accounts certified by the president of said commission, as required from time to time for services rendered or disbursements incurred.'

Page 71. 'To establish and equip a good roads school in the college of agriculture at Cornell university, and to provide for the instruction therein of highway commissioners, overseers of highways or other officers and persons in charge of the roads of the state, in the science of road making, ten thousand dollars ($10,000), or so much thereof as may be necessary.'

Page 72. 'For the river improvement commission, appointed under chapter seven hundred thirty-four, laws of nineteen hundred four, fifteen thousand dollars ($15,000), or so much thereof as may be necessary.'

'For the board of port wardens of the port of New York, for services in assisting the board of alienists, appointed under chapter three hundred twenty-six, laws of nineteen hundred four, in the manner provided in said act, nine thousand dollars ($9,000), said port wardens to be paid out of said amount one thousand dollars each.'

LEGISLATURE.

Page 10. 'For the clerks of the senate and assembly, for the use of the senate and assembly, for file boards, index clerk's books, committee books, stationery, printing, for revising the clerk's manual and books, and necessary law books for the use of the senate and assembly committees, as shall be authorized by the resolution of either house, fourteen thousand dollars ($14,000), or so much thereof as may be necessary.'

The above bill presented to me containing several items for the appropriation of money, I hereby, pursuant to the

provisions of section 9 of article 4 of the Constitution, object to the above mentioned items thereof while approving the other portion of the bill. I do not approve such items, for the reason that the expenditures thereby authorized are in my judgment unnecessary or inexpedient at this time. I hereby append this statement to said bill at the time of signing it."

June 3.

Memorandum filed with Assembly bill, Chap. 701, the supplemental supply bill.

"*Item.* 'The sum of forty-nine thousand two hundred eighty-three dollars and nineteen cents (re. $49,283.19), being the unexpended balance of appropriation made by chapter five hundred forty-one, laws of nineteen hundred three, for the acquisition of a site for a state hospital for the insane in the northeastern part of the state, north of the county of Rensselaer, and for the preparation of plans for such hospital, is hereby reappropriated for the same purpose, and to be paid in the same manner as provided in said act.' Approved.

Pursuant to the directions contained in chapter 541 of the laws of 1903, entitled "An act to provide for the acquisition of a site for a state hospital for the insane in the northeastern part of the state north of the county of Rensselaer, and for the preparation of plans for such hospital, and making an appropriation therefor," the state commission in lunacy, with the approval of my predecessor, selected a site for a state hospital for the insane at Comstocks in Washington county, and entered into contract with the owners thereof for the purchase of the same. The premises consist of 885 acres of land belonging to I. V. Baker, and 60 acres belonging to R. A. Johnson, making a total of 945 acres. The contract price is $42,500. The site is so located as to be easily approached by railroad and canal.

All the formalities of the act of 1903 have been complied with, and the state is legally obligated to take the land contracted for and pay the purchase price if the owners can give good title. It cannot escape its liability except by the dishonorable procedure of refusing to meet its valid obligations. The appropriation made by the act of 1903 having lapsed by expiration of time, it becomes my duty to approve this item so that the state may be able to perform its part of the contract. The question as to the wisdom of locating a state hospital for the insane in Washington county is one of policy, and that policy was fixed by the act of 1903 which practically located it there beyond the control of the Legislature of 1904 and beyond my control."

June 3.

Veto of items in Assembly bill, Chap. 701, the supplemental supply bill.

"LEGISLATURE.

Page 3. 'For compiling, revising, annotating and indexing the rules of the senate and the assembly and the parliamentary precedents thereunder, twenty-five hundred dollars ($2,500), or so much thereof as may be necessary, the same to be expended under the direction of the president of the senate and the speaker of the assembly.'

'For Charles J. Dodd, for personal expenses and counsel fees incurred in the contest by J. Harvey Waite for the seat of the sixth assembly district of the county of Kings, twenty-five hundred dollars ($2,500), which sum shall be paid upon the approval of the chairman of the committee on privileges and elections.'

'For Thomas F. Matthews, for personal expenses and counsel fees incurred in the contest by Samuel J. Palmer for the seat of the thirteenth assembly district of the county of Kings, fifteen hundred dollars ($1,500), which sum shall be paid upon the approval of the chairman of the committee on privileges and elections.'

'For E. Cook and T. F. C. Clary, counsel to the committee on privileges and elections, for counsel fees in the contest of Waite versus Dodd and in the contest of Palmer versus Matthews, two thousand dollars ($2,000), which sum shall be paid upon the approval of the chairman of the committee on privileges and elections.'

Page 4. 'For deficiency in appropriation for advances by the comptroller to the clerk of the assembly for contingent expenses, including stationery, printing and other supplies, two thousand five hundred dollars ($2,500), or so much thereof as may be necessary.'

THE ATTORNEY GENERAL.

Page 6. 'For Matthew Bender and company, for rebinding law books in the law library of the attorney general, in the year nineteen hundred two, one hundred seventy-three dollars and twenty-five cents ($173.25), or so much thereof as may be necessary.'

'For the services and expenses of counsel and other persons employed by the attorney general in the investigation, conducted by direction of the governor, of alleged trespasses in the forest preserve, eight hundred ninety-five dollars ($895), or so much thereof as may be necessary.'

STATE ENGINEER AND SURVEYOR.

Page 7. 'For the state engineer and surveyor, for the purpose of carrying out the provisions of chapter one hundred fifteen, laws of eighteen hundred ninety-eight, in relation to the improvement of public highways by state aid, fifty thousand dollars ($50,000), or so much thereof as may be necessary.'

PRINTING.

Page 9. 'For the printing of five thousand copies of the final report of the commissioners of the state of New York at the Louisiana purchase exposition held at Saint Louis

in the year nineteen hundred four, to be distributed as follows: thirty to each senator, twenty to each member of assembly, three hundred to state officers, and two hundred to the commissioners; and the printing of ten thousand copies of the publication entitled '*The Birds of New York,*' prepared under the direction of the education department, to be distributed as follows: thirty to each senator, twenty to each member of assembly, and the balance to the state museum; and for continuing the printing of ten thousand copies of the nature-study and extension bulletins during the current year to be included in the report of the commissioner of agriculture, and to be distributed as he may direct; and the printing of ten thousand copies of the appendix accompanying the seventh report of the forest, fish and game commission, to be distributed as follows: sixty-five copies to each senator and forty-five copies to each member of assembly for nineteen hundred five; all of which are hereby legalized and confirmed, and shall have the same force and effect as if the work therein ordered had been ordered by statute; said work to be performed by the contractor for legislative printing for the year commencing October first, nineteen hundred three; and to be paid for at the amounts audited by the comptroller; and the amount so audited and allowed to be paid upon the filing of the proper receipts in full for said items; the sum of fifty thousand dollars, or so much thereof as may be necessary, payable from the appropriations heretofore made for legislative printing.'

DEPARTMENT OF PUBLIC WORKS.

Page 13. 'For draining Gorman swamp and clearing out Black brook, which flows through state lands in Seneca county, five thousand dollars ($5,000), or so much thereof as may be necessary, said work to be done under the direction of the superintendent of public works; no part of the moneys to be expended until a release is obtained from

and executed by each of the owners of property through which the brook flows, releasing the state from any and all claims for damages by reason of anything done or to be done under this act.'

'For relaying, repairing, cleaning out and reconstructing a drain in the village of Middleport, in the county of Niagara, beginning at Main street, in said village, and running thence through State street into culvert number one hundred five under the Erie canal in the eastern part of said village, two thousand dollars ($2,000), or so much thereof as may be necessary.'

'For repairing the break water in Seneca lake known and designated as break water C as shown on plans for the improvement of Watkins harbor under chapter six hundred ninety-seven, laws of eighteen hundred ninety-nine, on file in the office of the superintendent of public works or in the office of the engineer of the western division at Rochester, situate in the harbor at Watkins on the Chemung canal and in Seneca lake; and also for repairing the break water in Seneca lake just north or northeast of the Northern Central railway passenger and freight stations, fifteen thousand dollars ($15,000), or so much thereof as may be necessary.'

TAX COMMISSIONERS.

Page 15. 'For the state board of tax commissioners, for their expenses in enforcing the provisions of the "act to amend the tax law in relation to taxation of debts secured by mortgages," for services of employees, for printing, postage, expressage, stationery and other necessary expenses, ten thousand dollars ($10,000), or so much thereof as may be necessary.'

MISCELLANEOUS.

Page 15. 'For Doctor W. C. Phelps, for surgical services rendered at the Thomas orphan asylum on or about May, nineteen hundred and one, in amputating the arm of Laura

M. Neisor, an employee of said institution, one hundred fifty dollars ($150), said amount to be paid on the approval of the superintendent and audit of the comptroller.'

' For the New York state commissioners of the Lewis and Clark centennial exposition in defraying the general expenses of said commission and for transportation of exhibits to Portland, Oregon, and return, and for such other expenses as may be required in the work of said commission including actual necessary and traveling and other contingent expenses incurred by the said commission, five thousand dollars ($5,000), or so much thereof as may be necessary.'

The above bill presented to me, containing several items for the appropriation of money, I hereby, pursuant to the provisions of section 9 of article 4 of the Constitution, object to the above mentioned items thereof, while approving the other portion of the bill. I do not approve said items, for the reason that the expenditures thereby authorized are in my judgment unnecessary or inexpedient at this time. I hereby append this statement to said bill at the time of signing it.'

June 3.

Memorandum filed with Senate bill, Chap. 727, entitled "An act to amend the railroad law in relation to the incorporation and powers of railroad corporations."—Approved.

" This bill was criticised when first introduced as being a dangerous measure, but at the time of the hearing before me the bill had been so amended that practically all opposition had disappeared. The powers granted are among those enjoyed by railroad companies in other states and exercised by them in this state until recent decisions of the courts placed a strict construction on the provisions of the railroad law hereby amended. Approval of this bill will doubtless result in greater efficiency in service to the public

by the railroad corporations. No private property can be taken by the railroads except for a public use and after just compensation therefor.[s] I am unable to discover that any rights, public or private, will be jeopardized by the approval of the bill."

June 3.

Memorandum filed with Senate bill, Chap. 729, entitled "An act to amend the tax law in relation to the taxation of debts secured by mortgages."—Approved.

"This act imposes, in lieu of the present general property tax, an annual tax of one-half of 1 per cent. on all mortgages recorded in this State after July 1, 1905, except mortgages given to the commissioners for loaning certain moneys of the United States of the several counties of the State and mortgages owned by the United States or the State, or any corporation or association organized exclusively for charitable, religious or educational purposes; and also mortgages on residence property not exceeding in amount three thousand dollars, on the same piece of property, executed by the shareholders, stockholders or members of the local building, loan and savings associations incorporated or organized under the laws of this State, the business operations of which associations shall hereafter be confined to a single city, village or town.

Mortgages are by the act exempted from taxation by counties, cities and other local subdivisions of the State. Holders of existing mortgages may at their option avail themselves of the privileges of taxation under this act, but existing mortgages are not otherwise affected.

When a mortgage is placed on record after July 1, 1905, the tax thereon must be paid to the first of July next following and annually thereafter. Payments are made to the recording officer. The proceeds of this tax are divided

[s] Const. 1894, Art. 1, § 6.

equally between the State and the local subdivisions of the State. It is estimated that it will produce a revenue to the State in the first year of its operation of not less than $1,500,000.

Mortgages have heretofore been subject to the general tax rate in every locality in the State except when held by exempt holders, non-residents, or persons whose indebtedness is in excess of their personal assessment. The local rate averages at least 2 per cent., and in many localities is much higher. When mortgages have been taxed undue hardship has been the result. When they have escaped taxation discrimination has been made. The tax imposed by the new law is moderate in amount and uniform in operation.

A tax of one-half of one per cent. on all mortgage indebtedness, past and future, was unanimously recommended by the Joint Committee on Taxation of the Senate and Assembly in 1900, in a report signed by Senators Stranahan, Higgins and Grady and Assemblymen Allds (now Senator), Collier and Murphy. That committee stated the following reasons for believing that the tax would not operate as an additional burden upon real estate, but would improve the condition of borrowers:

"First. It was stated to us by Mr. J. Harsen Rhoades, the President of the State Association of Savings Banks, that if mortgages were entirely exempted from taxation, the result would be a reduction of the average rate of interest paid by borrowers of at least one-half of 1 per cent. Mr. Rhoades was confirmed in this opinion by the presidents of four of the chief savings banks in New York city. This means that although mortgages generally escape taxation, the liability to tax under the existing law affects the interest rate to the extent of at least one-half of 1 per cent. If, then, we exempt mortgages from all taxation, except to the extent of one-half of 1 per cent., there will naturally be no substantial change in the average rate of interest.

"Second. The experience of former Comptroller Roberts has informed us that when State bonds were offered for sale a year or two ago, the bids came in two ways; one, if the bonds were to be exempt from taxation, and the other, if they were not, and there was a difference in the two rates of nine mills.

"Third. Mr. Frank Bailey, the vice-president of the Title Guaranty and Trust Company, of New York city, testified that the result of laying a single tax of four mills on mortgages in Pennsylvania was, that in new loans two rates were indicated, one for interest and one for the four mills tax; but that the two combined were less than the interest alone had been before the change in the method of taxation. Mr. Bailey further testified that the result of exempting mortgages in Massachusetts was that the average interest rate was reduced to three and a half per cent."

These reasons are as cogent now as they were in 1900. The savings banks of the State have deposits of more than a billion dollars, of which many millions are investment deposits, rather than small savings, made at a rate of interest varying from 3 to 4 per cent., to escape taxation. Nontaxable bonds of the State and nation, bearing but 3 per cent. interest, command a premium. Large sums now seeking these forms of investment will doubtless become available for mortgage loans when it is certain that the mortgage security will net the lender from four to five per cent on his investment. As stated by Professor Seligman of Columbia College, the well-known student of taxation, in a discussion of the mortgage tax bill of 1900, "Many individuals would welcome the opportunity of investing funds in a species of property which would be taxed at so low a figure. This large influx of capital would of itself tend to reduce the rate of interest."

The allied real estate interests have been well organized against this measure, and have doubtless been effective in developing hostility to the bill. No tax measure is popular. Taxes and death are the two painful certainties that cannot be escaped. It is not difficult to arouse oppositiion to any new tax measure from those who will be affected thereby. The political party that could honestly promise the abolition of taxation would be deservedly popular.

Tax laws should, in their operation, be uniform, universal and not oppressive. The tax law which this bill supersedes, so far as it affects mortgages, is unequal, partial and unjust. The exemption of mortgages from taxation is one alternative; the imposition of some less crude instrumentality of taxation is the other alternative. The latter alone is practicable at this time.

It has been urged upon me that the approval of this measure will result in disaster to the Republican party. I have avoided the consideration of this measure from a party standpoint. It is a business proposition rather than a political problem. The Republican party is the party of initiative and not the party of opposition. Its disaster has often been predicted, but it has survived the consequences of its policies on legislation. I shall not be deterred from approving a salutary bill because of its possible effects on the party. I cannot believe that any measure which equalizes the burdens of taxation can prove politically disastrous. It seems to me more disastrous to party interests to allow the present uneven and unfair taxation of wealth represented by mortgages to continue, than to put a stop to the exemptions and evasions which the present law permits.

It is a shortsighted policy for political parties to bid for class support by class legislation. The people are more numerous than any class, and they want fair play all around."

June 3.

Memorandum filed with Assembly bill, Chap. 734, entitled "An act to provide for the utilization, by the city of New York, of its water supply for the purpose of generating electric current for the use of said municipality."—Approved.

"This bill provides that 'The board of water supply of the city of New York may, subject to the approval of the board of estimate and apportionment, utilize such water as it now owns or as it may hereafter acquire, for the purposes of generating electric current for the use of the municipality, provided that no additional water shall be used for said purpose than would otherwise be required by the city of New York.'

It is to be observed that this bill presents a wholly different proposition from the matter stricken out of the city water supply bill in the Senate. This bill restricts to city purposes the use of the electric current developed, and provides that no additional water shall be used for said purpose than would otherwise be required by the city of New York. The city water supply bill in its original form provided for the sale or lease of power and electricity by the city to private consumers, and for the sale or lease of water when not needed for city purposes. These provisions had not the remotest relation to the solution of the lighting problem, and afforded no protection against the lighting companies. So far as I know, no opposition has manifested itself to the plan of utilizing the water owned or acquired by the city for the purpose of generating an electrical current for a municipal lighting plant. The plan of developing power and selling the same to private consumers was objectionable as having no connection with the main purpose of the water supply bill, as not being a proper city purpose within the meaning of the Constitution (Art. 8, section 10), which provides that no city shall be allowed to incur any indebtedness except for city purposes, and as unnecessary if not improper.

The effect of the omission of the words objected to from the water supply bill and of the present act is sentimental rather than practical. It will be years before such power can be utilized, and when it can be so utilized, according to the opinion of the mayor's expert, John R. Freeman, one of the members of the Burr-Herring-Freeman commission named by Mayor McClellan to investigate and report on the subject of an additional water supply for New York city, it will be ' of no noteworthy account or utility towards any such large requirement as involved in municipal lighting.' The power plants would be small, he says, and liable to long and severe interruptions. Doubtless the city should not be deprived of the rights and opportunities, even though relatively insignificant, which may aid it to establish a municipal lighting plant. It is in my judgment extremely doubtful that the omission from the water supply bill of any reference to the development of power could be construed so as to deprive the city of the right to develop and use power for city purposes. If this bill serves no other purpose, it will dispel all doubts on the point. I have therefore given it my approval."

June 4.

The omnibus veto included the following bills:

The following bills are not approved for the reason that they were not accepted by the mayors of the cities to which they relate:

S.-A. 1677. Boats and barges, excursion, fire protection.
S. 1328. Buffalo, charter, police department.
S.-A. 2317. Civil Service Law, veterans.
A. 1945. Code of civil procedure, dispossess proceedings, service of precept.
A. 1956. New York city court, additional stenographers.
A. 1345. Hudson, city charter, removal of poles and wires from certain streets.

S. 1299. Ogdensburg, city charter, street openings.
A. 846. Olean, city charter, commitments to Erie county penitentiary.
A. 2164. Oswego, city charter, recorder.
A. 946. Rapid transit act, presentation of claims.
S. 1231. Rochester, Brighton enrollments, etc.
S. 1349. Schenectady, pest house.
A. 257. Geneva, city street improvements, money for sewer extension.
A. 2216. Leng, Mary, property damaged.
A. 2288. Taxes and assessments, to legalize.
S. 876. Mount Vernon, relief of Young Men's Christian Association.

The following bills are not approved for the reason that they were not accepted by the city of New York:

A. 77. Brown, Manheim, claim.
A.-S. 1295. Charter, retirement fund.
A. 2351. Persons habitually intoxicated.
A. 232. Duggan, William H., patrolman.
A. 348. Brooklyn, firemen, to confirm appointment of.
A. 439. Charter, municipal court attendants.
A. 569. Taylor, Richard, claim.
A. 622. Campbell, Thomas F., patrolman.
A. 1996. Charter, powers of fire commissioner.
A. 1577. East River parks, refund of assessments.
A. 1943. Municipal court act, dispossess proceedings, service of precept.
A. 2330. Fire department employees, appointment to uniformed force.
A. 1609. Charter, street cleaning department.
A. 1706. McGowan, Elizabeth, refund taxes.
A. 2038. Richmond, unpaid taxes and tax sales.
A. 1815. Charter, appointment of patrolmen.
A. 2224. Public hospital.
S. 1336. Bronx, St. Paul's Reformed Episcopal church.

A. 2245. Charter, commissioners in condemnation proceedings.
A. 2319. Charter, police clerks.
S. 500. McGee, John C., policeman.
S. 1089. Brooklyn, release city interest in lands.
S. 1484. Bronx, change of grade in 23d and 24th wards, damage claims.
S. 691. Bronx, Pelham avenue, laying out.
S.-A. 2155. Mahon, Catherine F., pension.
S. 1064. Charter, height of buildings.
S. 1066. Waterbury, Nelson J., claim, retaxation of.
S. 1282. Refund of assessments paid under L. 1896, Ch. 57.
S. 1369. Stables near churches and hospitals.
S. 1503. Brooklyn, buildings and improvements.

The following bills are not approved because of being unconstitutional, defectively drafted, duplicates, special laws where relief can be had under existing law, or generally objectionable by reason of proposed changes:

Senate bill, Int. No. 80, printed No. 1472, entitled "An Act to amend section four hundred and fifty-eight of the penal code, relating to crimes against the public peace."

Assembly bill, Int. No. 383, printed No. 416, entitled "An Act to amend the penal code, relating to the unauthorized wearing of badges."

Assembly bill, Int. No. 562, printed No. 1769 (Senate reprint No. 1477), entitled "An Act to amend the penal code, relative to life saving crews on ferry boats and excursion boats."

Senate bill, Int. No. 208, printed No. 948, entitled "An Act to amend section six hundred and fifty-seven of the code of civil procedure."

Senate bill, Int. No. 194, printed No. 996, entitled "An Act to amend section fourteen hundred and eighteen of the code of civil procedure."

Senate bill, Int. No. 629, printed No. 1020, entitled "An Act to amend section two hundred and twenty of the code of civil

procedure relative to the designation of justices of the appellate division, and the times when such designations shall take effect."

Senate bill, Int. No. 707, printed No. 1306, entitled "An Act to amend the code of civil procedure in relation to accountants."

Senate bill, Int. No. 453, printed No. 1469, entitled "An Act to amend section three hundred and fifty-nine of the code of civil procedure, relative to stenographer for county court of Kings county."

Assembly bill, Int. No. 647, printed No. 727, entitled "An Act to amend the code of civil procedure relative to exemptions of jurors from service."

Assembly bill, Int. No. 703, printed No. 790, entitled "An Act to amend the code of civil procedure relative to the power and jurisdiction of justices of the peace in certain instances."

Assembly bill, Int. No. 701, printed No. 1120 (Senate reprint No. 1058), entitled "An Act to amend the code of civil procedure, in relation to the meaning of the term justice of the peace."

Assembly bill, Int. No. 700, printed No. 1150 (Senate reprint No. 1057), entitled "An Act to amend the code of civil procedure, in relation to jurisdiction of justices of the peace."

Assembly bill, Int. No. 516, printed No. 1466, entitled "An Act to amend the code of civil procedure, in relation to the petition for voluntary dissolution of a corporation."

Assembly bill, Int. No. 1184, printed No. 2148, entitled "An Act to amend the code of civil procedure, in relation to the sale, mortgaging or leasing of the contingent interest of infants not in being in real property."

Assembly bill, Int. No. 402, printed No. 2185, entitled "An Act to amend the code of civil procedure, relative to the possession of property on giving security."

Senate bill, Int. No. 923, printed No. 1259, entitled "An Act to amend section thirty-two of chapter six of the general laws in relation to the forms of registration at elections."

Assembly bill, Int. No. 407, printed No. 610, entitled "An Act to amend the poor law, relating to the relief of soldiers, sailors and their families."

Assembly bill, Int. No. 1163, printed No. 2220, entitled "An Act to amend the agricultural law, in relation to the prevention of disease in fruit trees, and the pests that infest the same."

Senate bill, Int. No. 355, printed No. 1269, entitled "An Act to amend sections four, fifty-three, eighty-one and one hundred and fourteen of the agricultural law, entitled 'An act in relation to agriculture, constituting articles one, two, three, four and five of chapter thirty-three of the general laws.'"

Assembly bill, Int. No. 472, printed No. 1398, entitled "An Act to amend chapter four hundred and sixty-two of the laws of eighteen hundred and ninety-nine, entitled 'An Act to amend the poor law, in relation to relief of soldiers by Grand Army posts,' in relation to relief of soldiers."

Senate bill, Int. No. 475, printed No. 1013, entitled "An Act to amend the tax law in relation to the taxation of debts secured by mortgages."

Assembly bill, Int. No. 605, printed No. 1353, entitled "An Act to amend section eighty-five of chapter five hundred sixty-eight of the laws of eighteen hundred and ninety, entitled 'An Act in relation to highways, constituting chapter nineteen of the general laws."

Assembly bill, Int. No. 606, printed No. 1847, entitled "An Act to amend the tax law, in relation to the notice of completion of assessment roll and grievance day."

Assembly bill, Int. No. 1558, printed No. 2281, entitled "An Act to amend chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, known as the highway law, in relation to limitation upon laying out highways."

Senate bill, Int. No. 720, printed No. 904, entitled "An Act to amend the highway law, relative to private roads, and to repeal certain sections thereof."

Senate bill, Int. No. 908, printed No. 1242, entitled "An Act to amend section eighty-eight of chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, entitled 'An Act in relation to highways, constituting chapter nineteen of the general laws as amended by chapter three hundred and thirty-four of the laws of eighteen hundred and ninety-four.'"

Assembly bill, Int. No. 428, printed No. 1046, entitled "An Act to amend the forest, fish and game law, in relation to the compensation of game protectors."

Assembly bill, Int. No. 994, printed No. 1205, entitled "An Act to amend the forest, fish and game law in relation to the pollution of streams."

Senate bill, Int. No. 496, printed No. 576, entitled "An Act to amend chapter twenty of the laws of nineteen hundred, entitled 'An Act for the protection of the forest, fish and game of the state, constituting chapter thirty-one of the general laws.'"

Senate bill, Int. No. 383, printed No. 545 (Assembly reprint No. 1959), entitled "An Act to amend the banking law relative to trust companies."

Assembly bill, Int. No. 1317, printed No. 1746, entitled "An Act to amend the stock corporation law in relation to the power to borrow money and mortgage property."

Senate bill, Int. No. 389, printed No. 431 (Assembly reprint No. 2310), entitled "An Act to amend the banking law in relation to profits and losses of co-operative savings and loan associations."

Assembly bill, Int. No. 547, printed No. 2093, entitled "An Act to amend the banking law, relative to security for loans made by co-operative savings and loan associations."

Senate bill, Int. No. 924, printed No. 1260, entitled "An Act to amend the membership corporation law, relative to soldiers' monument corporations."

Assembly bill, Int. No. 1140, printed No. 1427, entitled "An Act to amend an act, entitled 'An Act to fix the salary of the town clerk and commissioner of highways in the town of Saugerties, Ulster county.'"

Assembly bill, Int. No. 510, printed No. 2195, entitled "An Act to provide for clearing out the obstructions from the outlet of Parker's pond in the town of Cato, county of Cayuga, and for paying the cost thereof."

Assembly bill, Int. No. 357, printed No. 2270, entitled "An Act to provide for the better collection of unpaid assessments for

local improvements in the town of West Seneca, Erie county, New York."

Senate bill, Int. No. 968, printed No. 1361, entitled "An Act to amend chapter forty-seven of the laws of eighteen hundred and ninety-one, entitled 'An Act to make the office of county clerk of Herkimer county a salaried office and regulating the management of said office, relating to the power and authority of special deputies.'"

Assembly bill, Int. No. 1541, printed No. 2238, entitled "An Act to legalize and confirm the proceedings of the board of education and legal voters of union free school district number one of the towns of Luzerne, Warren county, and Hadley, Saratoga county, relative to the levy of a tax payable in installments, and the issuance and sale of certain school bonds of said district, for the purchase of a schoolhouse site and erection of a building thereon."

Senate bill, Int. No. 320, printed No. 344, entitled "An Act to amend chapter two hundred and sixty of the laws of nineteen hundred and three, entitled 'An Act to make the office of sheriff of Livingston county a salaried one in part, and to regulate the management thereof,' in relation to compensation of under sheriff, jailer and attendants."

Assembly bill, Int. No. 1504, printed No. 2166, entitled "An Act to legalize and confirm the action of a majority of the electors of the town of New Hartford, Oneida county, at the last biennial town meeting in said town, on November third, nineteen hundred and three, in relation to paying fifteen per centum of the cost of improving the Bridgewater turnpike as a town charge."

Assembly bill, Int. No. 1523, printed No. 2193, entitled "An Act to amend chapter five hundred and six of the laws of nineteen hundred and two, entitled 'An Act to amend the charter of the village of Saratoga Springs, and to provide for the appointment of sewer, water and street commissioners for said village, and to prescribe their powers and duties.'"

Assembly bill, Int. No. 1512, printed No. 2178, entitled "An Act authorizing the board of supervisors of the county of

Genesee to make an annual appropriation to corporations for the prevention of cruelty."

Assembly bill, Int. No. 1064, printed No. 1919, entitled "An Act to amend the consolidated school law, relative to the alteration of school districts having a bonded indebtedness."

Assembly bill, Int. No. 1532, printed No. 2212, entitled "An Act to amend section one of title sixteen, chapter eight, part three of the revised statutes, relative to the drainage of low lands."

Senate bill, Int. No. 339, printed No. 759, entitled "An Act to amend the state charities law, in relation to the state custodial asylum for feeble-minded women at Newark."

Assembly bill, Int. No. 641, printed No. 721, entitled "An Act to amend the revised statutes relative to the parole of prisoners."

Assembly bill, Int. No. 740, printed No. 839, entitled "An Act to amend the insurance law in relation to the incorporation of fraternal beneficiary societies, orders or associations."

Assembly bill, Int. No. 804, printed No. 933, entitled "An Act to amend the benevolent orders law, relative to power of trustees to issue bonds."

Assembly bill, Int. No. 577, printed No. 1755, entitled "An Act to amend the village law, in relation to the powers of the board of trustees as fence viewers."

Assembly bill, Int. No. 741, printed No. 1789, entitled "An Act to amend the state finance law, in relation to receipts and expenditures."

Assembly bill, Int. No. 386, printed No. 1848 (Senate reprint No. 1512), entitled "An Act to amend the civil service law, relating to the qualification of applicants for civil service examinations."

Senate bill, Int. No. 855, printed No. 1471, entitled "An Act to revise and consolidate the charter of the village of Ossining, and to extend the boundaries of said village."

Assembly bill, Int. No. 300, printed No. 858, entitled "An Act authorizing the village of Kenmore to levy a frontage tax for water purposes."

Assembly bill, Int. No. 470, printed No. 1067 (Senate reprint No. 1135), entitled "An Act to provide for the acquirement and abolition of toll roads and toll bridges."

Senate bill, Int. No. 853, printed No. 1137, entitled "An Act relating to the property of extinct or disbanded Congregational churches and societies."

Senate bill, Int. No. 913, printed No. 1394, entitled "An Act to amend chapter one hundred and forty-seven of the laws of nineteen hundred and three, entitled 'An Act making provision for issuing bonds to the amount of not to exceed one hundred and one million dollars for the improvement of the Erie canal, the Oswego canal and the Champlain canal, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and three,' in relation to locks and channel."

Assembly bill, Int. No. 390, printed No. 1256, entitled "An Act to legalize and validate the official acts of notaries public."

Assembly bill, Int. No. 1417, printed No. 1953, entitled "An Act to legalize the acts of Lyman C. Boughton, a coroner of the county of Wyoming, and to permit him to file his oath of office."

Assembly bill, Int. No. 1067, printed No. 1971, entitled "An Act to incorporate the Hebrew free loan association."

Assembly bill, Int. No. 1022, printed No. 2090, entitled "An Act to encourage the formation of companies to supply Pasteurized or clarified milk and cream and pure dairy products and to exempt the same from the provisions of sections one and two of chapter two hundred and ninety of the laws of eighteen hundred and ninety-nine, and section seven of the stock corporation law."

Assembly bill, Int. No. 1521, printed No. 2191, entitled "An Act to change the name of the Sacred Heart academy to Clason Point military academy."

Senate bill, Int. No. 1000, printed No. 1463, entitled "An Act to legalize the acts of James C. McCormick."

Assembly bill, Int. No. 1404, printed No. 1933, entitled "An Act to legalize the acts of William McCormick, a justice of the peace of the town of Potsdam, county of Saint Lawrence."

Senate bill, Int. No. 425, printed No. 1146 (Assembly reprint No. 2318), entitled "An Act to amend the village law, in relation to the borrowing of money for certain purposes."

Assembly bill, Int. No. 368, printed No. 368, entitled "An Act to provide for the repairing of the Montezuma turnpike across Montezuma marsh, and making an appropriation therefor."

Senate bill, Int. No. 98, printed No. 98, entitled "An Act making an appropriation for continuing the restocking of the Adirondack region with wild moose."

Senate bill, Int. No. 287, printed No. 307, entitled "An Act to facilitate state commerce by increasing the depth of water in the Erie basin at Buffalo, and making an appropriation therefor."

Assembly bill, Int. No. 1540, printed No. 2237, entitled "An Act making an appropriation to the state engineer for preparing surveys and estimates of the probable expense for constructing dikes and barriers along the Delaware river in the town of Cochecton in the county of Sullivan."

Senate bill, Int. No. 849, printed No. 1127, entitled "An Act providing for clearing out the channel between upper and lower Chateaugay lakes in the county of Clinton, and making an appropriation therefor."

Assembly bill, Int. No. 460, printed No. 490 (Senate reprint No. 1292), entitled "An Act to provide for the appointment of a commission to investigate the matter of disputed title to lands claimed by the state in counties containing portions of the forest preserve."

Senate bill, Int. No. 621, printed No. 1112 (Assembly reprint No. 2221), entitled "An Act to legalize, ratify and confirm the action of the town board of the town of Stockport in the county of Columbia, compromising and settling certain claims of James A. Haynes against said town and certain litigation with reference thereto."

Assembly bill, Int. No. 421, printed No. 961, entitled "An Act to amend the code of civil procedure, relative to the power of a court respecting the docket of its judgments."

Assembly bill, Int. No. 915, printed No. 1354, entitled "An Act

in relation to certain assessments for local improvements in the city of Syracuse."

Assembly bill, Int. No. 1225, printed No. 1542 (Senate reprint No. 1314), entitled "An Act to supplement the provisions of law, relating to the department of assessment and taxation of the city of Syracuse."

Assembly bill, Int. No. 1405, printed No. 2128, entitled "An Act providing for the payment of certain notes and indebtedness of the town of Frankfort, county of Herkimer, and authorizing the issue of town bonds for such purposes."

Senate bill, Int. No. 844, printed No. 1122, entitled "An Act to repeal chapter six hundred and twenty-nine of the laws of eighteen hundred and ninety-six, entitled 'An Act to close and strike from the town survey map of Kings county all that portion of East Ninety-second street, lying between Avenue L and Avenue N, as the same is laid down on said map.'"

Senate bill, Int. No. 82, printed No. 1329, entitled "An Act to amend the forest, fish and game law by providing for the appointment of game protectors for Jamaica bay and adjacent waters on Long Island and making an appropriation therefor."

Assembly bill, Int. No. 1537, printed No. 2217, entitled "An Act to provide for the participation of the state of New York in the Jamestown tercentennial exposition, to be held on and near the waters of Hampton Roads, in the state of Virginia, in the year nineteen hundred and seven, and making an appropriation therefor."

Senate bill, Int. No. 70, printed No. 279 (Assembly reprint No. 2312), entitled "An Act to amend section twenty-nine of chapter four hundred and sixty-six of the laws of eighteen hundred and seventy-seven, entitled 'An Act in relation to assignments of the estates of debtors for the benefit of creditors.'"

Assembly bill, Int. No. 582, printed No. 649, entitled "An Act to enable the commissioner of water supply, gas and electricity of the city of New York, to rehear and determine the charge against Adolph S. Wydler, formerly a clerk in the department of water supply, gas and electricity of said city, and to reinstate him in said department."

Assembly bill, Int. No. 1530, printed No. 2210, entitled "An Act authorizing the board of estimate and apportionment of the city of New York to audit and allow and the comptroller of said city to pay to Ernest H. Juergens compensation for services rendered to said city in the law department in the years eighteen hundred and ninety-nine and nineteen hundred as office boy."

Senate bill, Int. No. 342, printed No. 963, entitled "An Act to amend an act, entitled 'An Act in relation to the municipal court of the city of New York, its officers and marshals, being chapter five hundred and eighty of the laws of nineteen hundred and two,' to authorize the formation of an appellate term in the second judicial department, to appoint clerks and attendants, and to provide for the expenses thereof."

Senate bill, Int. No. 876, printed No. 1177, entitled "An Act to amend chapter three hundred and forty-seven of the laws of nineteen hundred and three, entitled 'An Act to provide for annual reports by cities of the second and third class of their financial condition,' in relation to compelling the making of such reports."

Assembly bill, Int. No. 847, printed No. 1337 (Senate reprint No. 1510), entitled "An Act to amend the Greater New York charter, relative to fire marshals."

Assembly bill, Int. No. 1525, printed No. 2205, entitled "An Act to provide an additional stenographer for the city court of the city of New York."

Senate bill, Int. No. 665, printed No. 1074, entitled "An Act to amend sections forty-three, forty-four, forty-seven and two hundred and forty-two of the Greater New York charter, with reference to the respective powers and duties of the board of estimate and apportionment and the board of aldermen."

Assembly bill, Int. No. 456, printed No. 1409, entitled "An Act authorizing the trustee of the fire department relief fund of the city of New York, to allow to Julia A. Murphy the pension to which she would have been entitled as widow of Lawrence Murphy had his death ensued as the immediate result of injuries received in the discharge of his duties."

Assembly bill, Int. No. 231, printed No. 231 (Senate reprint No. 1475), entitled "An Act to enable the police commissioner of the city of New York to rehear and determine the charges against Charles E. Savage, formerly a patrolman of the police department of said city, and to reinstate him in said department."

Assembly bill, Int. No. 75, printed No. 75, entitled "An Act authorizing the board of estimate and apportionment of the city of New York to allow and authorizing and directing the comptroller of the said city to pay certain claims incurred for the maintenance of the municipal court of the city of New York, twelfth district, Manhattan borough, during the year nineteen hundred and three."

Assembly bill, Int. No. 594, printed No. 661, entitled "An Act authorizing the audit and allowance of the claim of Andrew P. Wernberg against the city of New York, for services rendered as inspector in the auditing bureau of the department of finance of the city of New York."

Assembly bill, Int. No. 66, printed No. 66, entitled "An Act authorizing the police commissioner of the city of New York to appoint John W. Pinkley, an ex-policeman of the city of New York, who resigned from said police department, November twenty-four, eighteen hundred and ninety-seven."

Assembly bill, Int. No. 119, printed No. 119, entitled "An Act for the relief of Richard Davis, a volunteer fireman, for injuries received while a member of Richmond hook and ladder company number four, a volunteer fire company of the city of New York."

Assembly bill, Int. No. 162, printed No. 162, entitled "An act to enable the police commissioner of the city of New York to rehear and determine the charges against Richard Dillon, a policeman of the second grade, for reinstatement in said department."

Assembly bill, Int. No. 610, printed No. 676, entitled "An Act to authorize the payment of the claim of James A. Russell for services rendered the city of New York."

Assembly bill, Int. No. 628, printed No. 708 (Senate reprint No. 1400), entitled "An act authorizing the board of estimate

and apportionment of the city of New York to allow, and authorizing and directing the comptroller of the said city to pay, certain claims alleged to be due to certain dockmasters for services performed."

Assembly bill, Int. No. 828, printed No. 970 (Senate reprint No. 1085), entitled "An act to amend the Greater New York charter, relating to the salary of the deputy chief of fire department in charge of the boroughs of Brooklyn and Queens."

Assembly bill, Int. No. 1333, printed No. 1783, entitled "An Act for the relief of the minor daughter of Joseph Parker, a volunteer fireman, whose death resulted from injuries received by him while in the actual performance of his duties, and while a member of Granite hook and ladder company number two, a volunteer fire company of the city of New York."

Assembly bill, Int. No. 1492, printed No. 2138, entitled "An Act enabling the board of embalming examiners of the state of New York to receive the application of Patrick J. Burke of the borough of Manhattan, city of New York, for a license to engage in the business of embalming."

Senate bill, Int. No. 25, printed No. 25, entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow and also authorizing the comptroller of the city of New York to pay to Valentine M. Collins compensation for services actually rendered to the city of New York in the department of education in the years eighteen hundred and ninety-nine and nineteen hundred."

Senate bill, Int. No. 308, printed No. 334, entitled "An Act to amend the Greater New York charter, relative to powers of the board of estimate and apportionment."

Senate bill, Int. No. 504, printed No. 585, entitled "An Act to provide that the fire commissioner of the city of New York, in his discretion, may reappoint in the department Robert J. Sweeney, who resigned from the department November fourth, nineteen hundred and two."

Senate bill, Int. No. 694, printed No. 847, entitled "An act to amend subdivision seven of section twelve of the municipal court

act of the city of New York relative to designation and rotation of judges."

Senate bill, Int. No. 804, printed No. 1038, entitled "An act to amend section three hundred and seventy-four of the Greater New York charter, relative to the clerk of the board of justices of the municipal court."

Assembly bill, Int. No. 1321, printed No. 1772, entitled "An Act to repeal section six of title ten of chapter four hundred and sixteen of the laws of eighteen hundred and ninety-three, entitled 'An act in relation to the city court of Yonkers.'"

Assembly bill, Int. No. 1378, printed No. 1890, entitled "An Act to amend chapter forty of the laws of eighteen hundred and eighty-eight, entitled 'An act to incorporate the city of Hornellsville,' relating to city elections and city officers."

Senate bill, Int. No. 991, printed No. 1450, entitled "An act to confirm and legalize certain taxes and assessments in the city of Utica."

1905. JUNE 21. EXTRAORDINARY SESSION.

June 21. Pursuant to a proclamation by the Governor, dated June 15, the Legislature convened in extraordinary session.

June 21. The Governor transmitted the following

MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *June* 21, 1905.

TO THE LEGISLATURE.—Warren B. Hooker, one of the Justices of the Supreme Court of the State of New York, having requested a legislative inquiry as to his conduct, and the Assembly having referred the said request to its Committee on Judiciary, and testimony having been taken before said Committee and a report having been made by it;

And, upon the recommendation of said Committee contained in its said report, the Assembly having unanimously voted that proceedings be taken for the removal of said Warren B. Hooker from the said office of Justice of the Supreme Court, and having directed its Committee on Judiciary to formulate rules of practice and procedure in said matter, with a statement of the cause alleged for such removal and to report the same to the Assembly;

And the Legislature having adjourned, leaving said matter in abeyance;

And I, deeming the occasion an extraordinary one, having convened the Legislature in extraordinary session;

Now, Therefore, in accordance with the provisions of section 4 of article IV of the Constitution, I do hereby recommend for your consideration, at this extraordinary session, the conduct of said Warren B. Hooker, and the question of his removal from the office of Justice of the Supreme Court.[24]

FRANK W. HIGGINS.

SPECIAL MESSAGES.

July 20. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *July* 20, 1905.

I recommend for your consideration at this extraordinary session of the Legislature an appropriation sufficient to pay in full the expenses thereof.[25]

FRANK W. HIGGINS."

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[24] See *post*, page 825, for note on the Hooker Case.

[25] An act was passed, chapter 761, July 20, appropriating $30,000 for the expenses of the extraordinary session.

July 20. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill making an appropriation for the expenses of the extraordinary session. The bill was passed and became Chap. 761 on the 20th of July.

July 20. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, N. Y., *July* 20, 1905.

I was led to convene the Legislature in this Extraordinary session by reason of an extraordinary condition existing at the close of the regular session. A Justice of the Supreme Court stood accused by the judiciary committee of the Assembly of unfitness to remain on the bench. No other provision could be made for the speedy constitutional determination of the question whether cause existed for his removal from office. The right of the people to an untainted judiciary and the right of the accused judge to be heard in his defense, alike imposed upon me the imperative duty of summoning you to dispose of the case.

The Constitution provides that the Governor "shall have power to convene the Legislature * * * on extraordinary occasions" and that "at extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration."[1] Doubtless the Governor is the sole judge of what constitutes the extraordinary occasion which shall justify him in convening the Legislature in extraordinary session, and doubtless he may present any subject whatever to such a session, when convened, for its consideration. But the clear distinction made by the Constitution between the functions of the Legislature in regular and in extraordinary session plainly indicates that an

[1] Const. 1894, art. 4, § 4.

extraordinary session should be convened only in response to some emergent public demand and that such subjects alone should be recommended for consideration at such a session as are of general pressing and unusual importance. A matter so solemn and serious in its nature as a proceeding for the removal from office of a Justice of the Supreme Court should not be interrupted or complicated by the interjection therein of ordinary legislative business. Under our system of annual sessions of the Legislature, emergencies that call for consideration at an extraordinary session must necessarily be rare. I have accordingly refrained from recommending any subject of legislation for your consideration pending the hearing in Justice Hooker's case, and I now refrain from submitting to you not only important matters which were before you at your regular session, but also new matters of minor or local importance.

One subject in my judgment should be submitted to you for your consideration. The unfortunate scandals recently made public by the internal dissensions in the Equitable Life Assurance Society and by the investigation of its affairs by the Superintendent of Insurance have, not without just cause, aroused a feeling of intense alarm in the breasts of the thousands of our citizens who have invested their money in policies of life insurance, and of the thousands of non-residents who have been taught to respect the New York companies as safe and secure. While the business of life insurance, as at present conducted, is subject to State supervision and regulation for the purpose of guaranteeing solvency and the fulfillment of contracts on the part of the companies, it is evident that evils and abuses may exist under our law, that earnings which should be credited to the policy holders may be diverted to other purposes, that expenses of operation may be extravagant and wasteful, that unwise investments may be legally made

and that trustees may deal indirectly with the trust funds for their personal advantage. That such a condition of affairs can exist reflects discredit upon the State.

Legislation is no panacea for those ills of the body politic which arise from a disordered moral sense. The multiplication of penal statutes does not diminish the spirit of lawlessness but is rather a symptom of its growth. But it is apparent that our insurance law is in some particulars obsolescent and inadequate, and that the management of the funds of these great companies is not sufficiently safeguarded.

The State owes a duty to policy holders and beneficiaries beyond that of comparing assets with liabilities and permitting the companies to justify their existence by the exhibition of a satisfactory balance sheet and the prompt payment of losses. Investments must be restricted, salaries must be limited to amounts bearing a closer relation to the commercial value of the services rendered, trustees must be held to a stricter accountability, and the policy holders must be given a more effective share in the government of the companies. It may well be that the harsh and arbitrary remedy of dissolution and receivership should be made not only a penalty for insolvency but also a summary check upon a solvent company when it becomes irredeemably the plaything of lawless greed. The State cannot permit the subjects of its supervision to exist as licensed prodigals of other people's money without becoming an accomplice to the offense.

We cannot judge all life insurance companies by the sins of one. We should not destroy the edifice to rid ourselves of the vermin that infest it, nor should we kill the patient to stop the progress of the disease. A revision of our insurance law is necessary, but it should be made with calmness, deliberation and intelligence and after careful study and investigation.

The Superintendent of Insurance is authorized by law to "examine under oath the officers and agents of any such corporation and its books with reference to its business." Within the scope of his authority and the limits of his time the Superintendent has performed his duty with impartial thoroughness. Although he has informed me that, by reason of the statutory limitations upon his inquisitorial powers, and by reason of the magnitude of the task imposed upon him he would welcome the aid of a legislative investigating committee, I have been of the opinion that he, with his staff of experts and with the authority vested in him to conduct investigations at the expense of the companies examined, was well qualified to collect all necessary evidence upon which to base new legislation and that no other investigation outside the courts of justice, was necessary or desirable, pending the investigation now being conducted by him.

It is, however, of the highest importance that a revision of the Insurance Law should be enacted as promptly as is consistent with a thorough knowledge of the subject. It is proper and necessary that the Legislature should determine for itself how the information upon which to base such a revision may best be obtained. If in its judgment an investigation conducted by its own members is calculated to produce the most satisfactory results such an investigation cannot too speedily be begun.

In order that you may be free to consider and act upon the subject at this session, I therefore, pursuant to the Constitution, do hereby recommend for your consideration the question of the appointment of a joint committee of the Senate and Assembly with the usual powers of such committees, to investigate, after your adjournment, the operations of life insurance companies doing business in the State, for the purpose of preparing and recommending to the next regular session of the Legislature such proposed legislation as may be adequate and proper to restore

public confidence and to compel life insurance companies to conduct a safe honest and open business for the benefit of their policy holders.[26]

FRANK W. HIGGINS."

THE HOOKER CASE.

The complaint against Warren B. Hooker, a Justice of the Supreme Court, which was the occasion and chief business of the extraordinary session of 1905, *ante*, p. 819, was first formally brought to the attention of the Legislature by Justice Hooker himself, in the following communication addressed to the Speaker of the Assembly:

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[26] Acting on the Governor's message a concurrent resolution was adopted by both houses on the 20th of July, providing for the appointment of a joint committee to be composed of three Senators and five members of the Assembly, "which committee shall, after the adjournment of the extraordinary session, proceed to investigate and examine into the business and affairs of life insurance companies doing business in the State of New York, with reference to the investments of said companies, the relation of the officers thereof to such investments, the relation of such companies to subsidiary corporations, the government and control of said companies, the contractual relations of said companies to their policyholders, the cost of life insurance, the expenses of said companies and any other phase of the life insurance business deemed by the committee to be proper for the purpose of drafting and reporting to the next session of the Legislature such a revision of the laws regulating and relating to life insurance in this State as said committee may deem proper."

The committee was given the usual powers relative to the employment of counsel and the production of evidence. The members of the committee on the part of the Senate were William W. Armstrong, William J. Tully, and Daniel J. Riordan, and on the part of the Assembly, James T. Rogers, Robert Lynn Cox, William W. Wemple, Ezra P. Prentice and John McKeown. Senator Armstrong was made chairman of the committee. One of the counsel appointed by the committee was Charles E. Hughes, who was elected Governor in 1906.

The report of this committee was submitted to the Legislature of 1906 on the 22d of February. In 1906 several statutes were passed for the purpose of carrying into effect recommendations made by the committee. See *post*, pp. 837–842.

NEW YORK, *January* 23, 1905.

Hon. S. FRED NIXON, *Speaker of the Assembly, Albany, N. Y.:*

SIR.—About one year ago the Jamestown Bar Association sent a communication to the State Bar Association, which while distinctly stating that no charges against my conduct were intended to be made, contained intimations which impelled the State Bar Association to refer the whole matter to its general committee on grievances. That committee appointed a sub-committee, which after several sessions at which evidence was presented, reported to the general committee such evidence and its findings, with a recommendation that the matter be referred to the Legislature. Its findings but not the recommendation were approved by the general committee, and the whole matter was referred to the State Bar Association.

A copy of the report and of the evidence is herewith submitted to you.

At the recent meeting of the State Bar Association held in Albany, one resolution was adopted approving the report of the general committee, and another, to the effect that the facts embodied in the report were not of a character to warrant legislative investigation.

Notwithstanding such action by the State Bar Association, a number of prominent lawyers and a portion of the public press have insisted that legislative investigation should be had. These demands must have impressed the public. Therefore I respectfully but earnestly urge as due to the public, my office, and myself that my conduct be made the subject of legislative inquiry.

Respectfully yours,

WARREN B. HOOKER.

The foregoing communication was handed down by the Speaker on the 23d of January, and referred to the Assembly judiciary committee. For the communication from the

Jamestown Bar Association to the State Bar Association, and the action of the latter association thereon, see the Annual Report of the New York State Bar Association for 1905.

The complaint of the Jamestown Bar Association, which was the beginning of the movement resulting in the trial of Justice Hooker, related chiefly to his alleged conduct in connection with certain subordinate appointments in the postoffice at Fredonia and Dunkirk, N. Y. The complaint also involved matters connected with a lease to the Federal government of the Dunkirk postoffice, which was located in a building in which Justice Hooker had a pecuniary interest.

On the 30th of January a resolution was offered in the Assembly providing for an investigation of the whole matter by the judiciary committee. This was referred to the judiciary committee, and that committee on the 1st of February reported a preamble and resolutions, which were adopted, providing for the investigation. The preamble recited the complaint by the Jamestown Bar Association and subsequent action by the State Bar Association, and the communication from Justice Hooker. The resolution then directed the judiciary committee to " inquire and fully investigate in regard to the truth of the accusations against said Warren B. Hooker contained in said communication of the said Jamestown Bar Association, and all matters relating thereto or connected therewith and all other matters relating to or affecting the fitness of said Warren B. Hooker to hold the high office of Justice of the Supreme Court." The committee was required to report the testimony and other proceedings, and its opinion thereon, with such recommendations as it might make in the matter. The report was to be made on or before the 15th of March, but the time was afterward extended to the 27th of April. The committee held hearings and took testimony in the matter, and presented its report on the 1st of May. For the text

of the report see Assembly Journal, 1905, vol. 5, page 3812, appendix 14.

The report contained a history of the investigation and the findings of fact and the conclusions which the committee deemed established by the evidence. The committee recommended that proceedings be taken by the Legislature for the removal of Justice Hooker as provided by Art. 6, sec 11 of the Constitution. The report was adopted by the Assembly.

On the 5th of May, the day of final adjournment, the Assembly adopted a resolution directing the judiciary committee to formulate rules of practice and procedure in the proceeding for the removal, with a statement of the cause alleged for such removal and report to the Assembly. The committee was authorized to sit during the recess.

On the 15th of June, Governor Higgins issued a proclamation convening the Legislature in extraordinary session on the 21st. The Legislature met accordingly.

After the reading of the Governor's message (see *ante,* p. 819) the judiciary committee presented its report on rules of procedure as required by the resolution of the 5th of May, and the statement of cause alleged as required by the Constitution. The report states that the committee invited the members of the Senate judiciary committee to confer with the Assembly committee on the preparation of rules of procedure and the statement of cause, that several members of the Senate committee did attend for this purpose, that other members of that committee were kept informed of the progress of the proceedings, and that as a result of these conferences, the Senate committee had substantially, though informally, agreed to the report as presented by the Assembly committee. For this report see Assembly Journal of the extraordinary session, page 8, and also Senate Journal of the Extraordinary Session, page 7.

The report was adopted by the Assembly on the 21st, and on the same day was delivered to the Senate, and referred to the judiciary committee. That committee considered the question whether under the Constitution the Legislature had power to remove Justice Hooker on the statement of cause alleged as prepared by the Assembly committee. On the 28th of June the Senate judiciary committee presented a report in which the question of jurisdiction was considered at length, and in which the opinion was expressed that "the question of what constitutes cause is for the Legislature to decide." The committee reported favorably the concurrent resolution adopted by the Assembly on the 21st, approving the statement of cause alleged as prepared by the Assembly judiciary committee for the government of the Legislature in the removal proceedings, and directing that a copy of the statement, together with the resolution be served on Justice Hooker with a notice fixing the time and place for the hearing. The 10th of July was fixed as the date for the hearing, which was to be held in the Assembly Chamber in the Capitol.

The Legislature adjourned from the 28th of June to the 10th of July, on which day it met again, and among other things received Justice Hooker's answer to the statement of cause served on him. The rules of procedure were presented, and in part agreed to. The Senate and Assembly met in joint session in the Assembly Chamber with the Lieutenant-Governor, M. Linn Bruce, presiding. Justice Hooker appeared in person, and also by his counsel, Lewis E. Carr, William W. Goodrich, William B. Hoyt, William E. Kisselburgh, and John B. Stanchfield. Henry B. Coman represented the Legislature; the State Bar Association was represented by William P. Goodelle and George A. Lawyer; the New York City Bar Association by Wallace MacFarlane; Brooklyn City Bar Association by William B. Hurd, Jr.; and the Jamestown Bar Association by Frank W. Stevens.

Justice Hooker, by his counsel, challenged the right of members of the judiciary committee to take any part in the removal proceedings, on the ground that as such judiciary committee they had heard the accusations and evidence taken in this matter, had determined upon and reported findings of fact and conclusions of law relative thereto, and had recommended to the Legislature to institute this proceeding, and had thereby disqualified themselves, both in law and equity, from in any way taking any part in this proceeding. The challenge was overruled.

The trial was concluded and the joint session dissolved on the 19th of July. The next day, the 20th, a concurrent resolution was introduced in the Assembly providing for the removal of Justice Hooker. There were 76 votes in favor of it and 67 against it. Under the Constitution, Art. 6, sec. 11, the concurrence of two-thirds of all the members elected to each house was required for the adoption of a resolution for removal; 100 votes were therefore necessary in the Assembly. The result of the vote in the Assembly was immediately communicated to the Senate. No action relating to the removal of Justice Hooker was taken by the Senate after the close of the joint session.

A supplemental volume of the journal of each house for 1905 was published, containing a history of the Hooker Case, including resolutions, reports, documents, evidence, speeches by members of the Senate and Assembly, arguments of counsel and other proceedings incident to the trial, together with other business transacted at the extraordinary session.

July 20. The Extraordinary Session adjourned without day.

FRANK W. HIGGINS, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 3, 1906.

TO THE LEGISLATURE.— In transmitting my second annual message, I have in mind that the Constitution directs me, first, to communicate to the Legislature the condition of the State, in order that the same may be set forth clearly at the outset as a guide to proper and practical legislation on matters of taxation and appropriations, and that I am also charged with the duty of recommending such matters to the Legislature as I shall deem expedient, in order that my policy on legislation may be clearly defined. The duty to recommend carries with it the duty to aid in carrying out such recommendations.

Each department of government — legislative, executive and judicial — is restricted to the exercise of its legitimate functions and one should not be permitted to enter the domain of the others. Yet there is, and can be, no clear line of demarcation separating these departments and making them wholly independent of one another. Constitutional checks and balances are provided, so that no department is supreme, even in its own field. The Governor's chief duty is " to take care that the laws are faithfully executed," but the Legislature places restraints upon executive power and responsibility by its control of the public purse and of the terms and methods of appointment and removal of public officers through whose agency the Governor must act.

The courts may declare laws void for unconstitutionality and the Legislature may remove judges from office for cause. The Governor is responsible, to a large extent, both for the beginning and the ending of important legislation. The duty to recommend measures and the power to veto bills are his constitutional warrant for participation in the lawmaking functions of government and mark the limitations beyond which he should not pass.[a]

It is my earnest hope and confident expectation that harmony and forbearance shall continue to characterize the relations between the Executive and the Legislature; that neither shall seek to shirk or shift responsibility and that the session shall be marked by the passage of all just measures and the defeat of all unworthy or base measures, should any such present themselves.

STATE DEBT.

On September 30, 1905, the close of the fiscal year, the total debt of the State amounted to $11,155,660, classified as follows:

Adirondack Park	$455,000 00
National Guard Public Defenses	200,000 00
Canals	10,500,660 00
Total	$11,155,660 00

The sinking fund created for the payment of the canal debt amounted on the 30th of September, 1905, to $4,607,457.97, which, in effect, reduces the amount of the canal debt to the sum of $5,893,202.03. The debt maturing during the fiscal year consists of $1,270,000 canal improvement bonds issued pursuant to Chapter 79 of the Laws of 1895, maturing January 1, 1906; $55,000 Adirondack Park bonds

[a] Const. 1894, art. 4, §§ 4, 9.

issued pursuant to Chapter 561 of the Laws of 1895, maturing January 30, 1906, and $200,000 National Guard Public Defense bonds issued pursuant to Chapter 672 of the Laws of 1898, $100,000 of which mature on the first days of May and November respectively; $200,000 of Adirondack Park bonds mature on the 1st day of February, 1907.

RECEIPTS AND EXPENDITURES.

The total receipts of the State Treasurer from all sources for the year ending September 30, 1905, were $29,195,569.89; the total payments were $28,479,350.51. The actual available balance on October 1, 1905, was $6,114,532.47. The total appropriations in force October 1, 1905, amount to $27,583,606.98; which is $3,504,353.10 more than the income of the last fiscal year which was applicable to the payment of appropriations. The Comptroller estimates that the revenues for the present fiscal year applicable to the expenses of government will not be less than $28,000,000. The State debt will doubtless necessarily be increased by the issue of barge canal bonds[1] and highway improvement bonds during the coming year.[2] Provision

[1] Chapter 302, passed April 24, made provision for the issue of barge canal bonds not exceeding $99,000,000, which were authorized by the act of 1903, chapter 147, but which had not been issued. The proceeds were to be used for canal enlargement and improvement as provided by the Barge Canal Act of 1903. The bonds were to run fifty years, and were to bear interest at a rate not exceeding three per cent. payable semi-annually. The act imposed an annual tax of $\frac{481}{1000}$ of a mill for the payment of the bonds, and provided for a sinking fund, but the Legislature was authorized to appropriate other moneys to such sinking fund, and in case of such appropriation the annual tax might be omitted. The act also contained provisions relative to contracts for the purpose of making the proposed improvements.

An appropriation for the sinking fund in lieu of this tax was made by chapter 461, passed May 15.

[2] In 1905 the Constitution was amended by adding to Article 7 a section, 12, authorizing the creation of State debts for highway improvement not to exceed at any time the sum of $50,000,000, and provision was made for a sinking fund and the apportionment of the expense of highway improvement between the State and localities.

should, if possible, be made to pay the interest on such debt and to provide the necessary sinking fund for the payment of the principal without increasing the burdens of direct taxation. To accomplish this purpose will require economy and firm resistance to the steady tendency to increase expenditures.

TAXATION.

The great burden of taxation is local and not State in its character, is due to the activities of the local authorities and is rapidly increasing. The cost of the city government of New York City for the past six years is as follows:

1900	$90,778,972 48
1901	98,100,413 43
1902	98,618,600 88
1903	97,119,031 10
1904	106,674,955 09
1905	110,525,259 04
The appropriations for 1906 are	116,805,490 37

The net bonded debt of New York City on December 31, 1900, was $280,895,762.45. This had risen on November 30, 1904, to $445,889,941.00.

All tax measures have their vigorous critics. Taken one by one, each may be shown to work hardship and injustice.

An act, chapter 469, passed May 16, 1906, contained regulations applicable to the sale of highway improvement bonds, which were to be sold by the Comptroller each year to an amount not exceeding the sum appropriated for highway improvement. The bonds were divided into two classes, namely, class A, to raise moneys to be expended directly by the State and to be paid by the State; and class B, to meet obligations of localities for highway improvement and to be paid from a redemption fund provided by the localities where the money had been expended. Interest could not exceed three and a half per cent. For the purpose of creating a sinking fund to pay the class A bonds, an annual tax of $\frac{55}{10000}$ of a mill was to be levied for each $1,000,000 of outstanding bonds, but if other moneys were used for this sinking fund the tax might be omitted. The act appropriated $5,000,000 for highway improvement.

Such criticisms are not always disingenuous. For example, the Mortgage Tax Law, which is a law to equalize and reduce taxation on mortgages and to prevent tax dodging, is denounced as "pernicious double taxation." Obviously, those who make this argument seek the exemption of all mortgages from taxation, rather than the restoration of the old law under which taxation of mortgages was not only double in the sense in which that term is used, but also grossly uneven and discriminating and at a higher rate. Opponents of each form of indirect taxation state their disinterested economical belief in the general property tax, which experts in taxation say is worthy only of an age of mental and moral darkness and degradation; inequality of assessment, failure to reach personal property and incentive to dishonesty being among its more glaring defects. Governor Roosevelt said in 1899 that "our system of taxation is in utter confusion, full of injustices and queer anomalies."* A fundamental problem which confronts the State, now as heretofore, is that of bringing about greater fairness in distributing the weight of taxation. Mediæval survivals, selfish expedients and inequitable make-shifts should, wherever possible, be superseded by provisions that shall better realize the principles of justice which should govern the State in its relations with the citizen.

In dealing with the problem of tax reform it must be remembered that we live in a practical world, and that volunteers for the purpose of carrying the load of direct or indirect taxation will be few. Men who would not dodge their creditors have no scruples in evading the tax collector. We may content the class that opposes the mortgage tax by exempting personal property and putting the additional burden on land. We may satisfy the class that opposes the stock transfer tax by shifting the burden to transfers on the Produce Exchange, but as we tranquilize one element

* *Ante*, p. 2.

we arouse another, and no lasting peace is possible until a fair final settlement of the question is had.

The last session of the Legislature was characterized by special attention to the subject of raising revenues sufficient to meet the obligations of the State. Charitable bequests were exempted from the transfer tax. The Mortgage Tax Law and the Stock Transfer Tax Law were adopted.[3] The tax on the surplus of savings banks was allowed still to remain on the statute books. What was left undone showed a lamentable disregard for party honor. I again recommend that the tax on the surplus of savings banks be repealed, and I urge you to give the other measures a fair trial, perfecting them if necessary, before interfering with their fundamental principles. With proper economy the revenues of the year will be sufficient and, at present, no necessity for new taxes confronts us; but the barge canal debt and the highway improvement debt will introduce additional reasons for further study of the tax problem.

I desire to call attention to the construction given by the courts to Sec. 181 of the Tax Law, imposing a license tax upon foreign corporations doing business in this State. It has been held that a foreign corporation which employs all its capital in the State of New York should be assessed upon its capital employed here and not upon its capital stock. In other words, a foreign corporation, organized say in South Dakota, can authorize and issue $3,000,000 of stock, largely diluted with water, actually employ only $200,000 in this State, do business only in this State, and have its license fee computed on the basis of $200,000; while

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[3] In 1905 an act was passed, chapter 729, providing for the taxation of mortgages. This act was sustained in People ex rel. Eisman v. Ronner, (1906) 185 N. Y. 285. The act was amended in 1906 by chapter 532, and in 1907 by chapter 340.

A tax on the transfers of stock was passed in 1905, chapter 241. This act was sustained in People ex rel. Hatch v. Reardon (1906), 184 N. Y. 431. The act was amended in 1906 by chapter 414, and in 1907 by chapter 324.

a like domestic corporation would be required to pay an organization tax on its entire capital stock of $3,000,000. A corporation, organized elsewhere to do business in this State, and which is a foreign corporation in name only, thereby obtains an unfair advantage over the legitimate domestic corporation which is incorporated under our laws and does not seek to evade taxation.[4]

I recommend that a commission, consisting in part of members of the Legislature and in part of persons in private life, be provided, whose duty shall be to inquire into the subject of assessment and taxation for State and local purposes, the operation and effect of the laws relating thereto, and the expediency of revising and amending such laws so as to establish a more equal and just system of raising public revenues. The time seems ripe for such a commission in this State to present a comprehensive plan to rationalize the present tax system.[5]

INSURANCE.

The magnitude and extent of the business of life insurance is startling, even after a year of discussion and agita-

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[4] See People ex rel. Consol. Ginseng Co. v. Kelsey, 105 App. Div. 175, affirmed in 182 N. Y. 526.

An act, chapter 474, passed in 1906, amended section 181 of the Tax Law relative to the license fee to be paid by a foreign corporation doing business in this State, by adding a provision that "the measure of the amount of capital stock employed in this State shall be such a portion of the issued capital stock as the gross assets employed in any business within this State bear to the gross assets wherever employed in business. For the purposes of taxation, the capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located."

[5] A tax commission was created by chapter 340, passed April 30. The commission was to be composed of fifteen members, five to be appointed by the Governor, five Senators to be appointed by the President of the Senate, and five members of the Assembly to be appointed by the Speaker. The commission was required to report to the Legislature on or before January 15, 1907, with such bills as it might deem proper for the purpose of carrying its recommendations into effect. The act appropriated $25,000 for the expenses of the commission.

tion. At the end of December, 1904, forty-two companies doing business in the State of New York had total gross assets of $2,454,669,436.63. For the year ending December 31, 1904, these companies had received in premiums $489,542,922.04, and they had a total income from all sources of $580,743,959.14. The disbursements for commissions to agents on this business amounted to $67,086,887.97; the salaries, medical fees and payments to employees were $36,537,255.98 and other disbursements were $33,395,686.55. The total number of policies in force December 31, 1904, of the forty-two companies named, was 9,949,722, insuring $10,028,090,981. The business may be roughly divided in halves between three great companies existing under the laws of New York on the one side and the remaining companies on the other. The problem of State regulation of insurance has become one of overshadowing importance. It calls for calm, courageous and intelligent treatment. We must aim to cure, not to kill; to preserve, not to tear down. Great companies have, in the past ten years, been heaping up riches almost beyond the dreams of avarice. They deal with amounts rivaling in magnitude the cost and indebtedness of national governments. The average policy holder has rested content in a belief in their financial soundness and in the integrity of their managers. Self-denial, prudence, foresight, and a desire to protect the family and provide for old age have given a ready ear to the eager and persistent solicitations of lavishly paid agents, until the hopes and fears of our people find general expression in their life insurance investments. This enormous business has been done under laws most generous to the companies. While the State permits none to transact the business of life insurance within its borders without an official certificate of authorization and provides for the examination of the officers and agents of such companies under oath with reference to their business, such examinations are conducted with a view to ascertaining solvency

and not for the purpose of otherwise interfering with the discretion of the directors in making investments, paying salaries, distributing surpluses and other matters involving the internal management of a solvent company. It is to the credit of the State that no insurance company has failed in recent years.

State supervision, not State regulation, has been authorized by law, yet inconsistently enough section 56 of the Insurance Law guards the companies from any but State action which shall interfere in any way with the prosecution of the business of said companies through the equitable remedies of accounting or injunction.

The courts have been no less liberal than the Legislature. They have decided that the holder of a policy, even in a mutual company, is in no sense a partner of the corporation which issued the policy; that the relation between the policy holder and the company is one of contract, measured by the terms of the policy; that upon the payment of premiums the money immediately becomes the property of the company and no title thereto remains in any of the policy holders; that no trust relation exists between company and policy holders and that no distribution of the surplus can be compelled by a policy holder, except where wrongdoing or mistake is affirmatively alleged and proved. The officers and managers of life insurance companies have been permitted, without let or hindrance, to fix the terms of the contract and to determine how much of the surplus should be distributed to policy holders, and when, and how much retained by the company. Funds have continued to grow until their control for speculative purposes and various subsidiary enterprises has been enough to make vast fortunes for their custodians and until princely salaries have become trifling compared with the magnificent total of assets. The bitter struggle for the control of the Equitable last winter brought scandal and discredit upon great managers of the insurance business, and aroused the public

from confidence and indifference to the keenest interest in the subject. The policy holder now demands something better from the State than a guarantee of solvency. He has learned that his insurance will be cheaper and safer when the companies are compelled to invest their assets for his benefit exclusively, and are prevented from diverting funds to the individual undertakings of speculative directors and to the payment of vast salaries and exorbitant commissions, gratuities to men of influence and contributions for political campaign purposes. He invokes the power of the State to shield him more effectively and to curb the companies and their directors.

It is improper for me at this time to anticipate the report of your committee which has conducted its trying duties with ability, courage and success, nor shall I seek to outline a new Insurance Law. Legislative action prior to the presentation of the report would be injudicious and premature.

You will be called upon to make a radical revision of the law for the benefit of investors in life insurance and for the regulation and restraint of the companies. We may well consider at this time the expediency of providing for more thorough regulation by the Department of Insurance. Under the new Insurance Law of Germany not only are thorough investigation and publicity insured, but the government director actually enters into the business methods of the corporation. The law requires that the funds of the company be invested only in certain prescribed securities, all of which are devoid of speculative character, such as attaches to corporate stocks of every description; limits the commissions of agents and regulates with much detail the management of the companies. We can learn much from a careful examination of this law, although some of its provisions may be deemed too paternal for our differing conditions of business and political life or objectionable as leaving too much to the discretion of the Insurance Department.

The funds of insurance companies should sacredly be safeguarded for the policy holders by the State and every element of personal gain eliminated from their management. To accomplish this result it has been suggested that large amounts ought, for the safety of the insured as well as for the good of the community, to be invested in bonds secured by mortgages on real estate at a conservative valuation; that deposits with or loans to moneyed corporations should be subject to suitable restrictions; that the control of subsidiary companies should not be permitted; that insurance directors should have no conflicting business connections; that investments in corporate bonds should be regulated so as to prevent speculation and loss from an attempt to float doubtful enterprises; that policies should be of standard forms so that the abuses arising from ambiguity, complexity and incompleteness of the contract may be eradicated and the contract made definite in form and substance; that a uniform system of audits and accounts should be prescribed by the Insurance Department; that full publicity to policy holders should be assured; that deferred dividend policies should be prohibited or greatly restricted; that policies should be further safeguarded from forfeiture; that an equitable distribution of the gains of the company to the policy holders entitled thereto should be required; that policy holders should have an effective voice in the government of the companies and that the discretion of the directors should be subject to judicial or administrative review.

The eyes of the whole world are now turned toward New York and if this Legislature does not produce an Insurance Law which shall be drastic but practicable, radical but sane, in a spirit which shall be courageous but not hysterical, it will fail to meet the expectations of those who have confidence in the ability of popular government to solve its own problems as they arise.

Future effective action by Congress or the Federal Government is not probable and the possibility of such action should not retard for an instant the work of the State.

While life insurance has received almost exclusive attention it cannot be assumed that other corporations dealing in indemnity and investment contracts have been blameless, and a word of caution may not be amiss regarding assessment associations, accident insurance companies, co-operative fire insurance companies and the like. Better allow free and unregulated insurance than permit such concerns to exist under laws which do not protect our citizens but enable the promoter of doubtful schemes to beguile the investor to financial disappointment and fatten himself on false promises and deluded hopes.[6]

CANALS.

A total of 3,226,896 tons was carried on all the canals of the State during the season of 1905, in comparison with 3,138,605 tons carried in 1904; a gain of 88,291 tons. From a financial standpoint the past season is the best that boatmen have known in many years, although the total of tons carried was less than in any previous year excepting 1904. Profitable rates were paid, not only on way traffic but on through freight. Railroad congestion of through freight contributed to this condition, not alone in supplying an abundance of freight to be carried, but also in forcing a greatly increased rate until, during the last month of navigation, boatmen received five cents a bushel for carrying

[6] Several acts affecting life insurance companies were passed at this session, including chapter 123, election of directors in mutual companies; chapter 228, amending the General Corporation Law relative to acquisition of real property; chapter 231, adding to the Penal Code section 577k, relative to rebates and allowances; chapter 238, amending the Stock Corporation Law, relative to the qualifications of directors; chapter 239, amending the General Corporation Law relative to political contributions; chapter 326, amending the Insurance Law generally; chapter 354, amending the foregoing chapter 123, relative to the date of election of directors.

grain from Buffalo to New York. The slight increase in tonnage over last year does not completely reflect the improved condition, so far as canal traffic is concerned. There has seldom been so little interruption to navigation. The structures have been maintained in good operating order, and there has been at all times a sufficient supply of water. From a physical standpoint, as the canals have been operated, there is no doubt but that a total of 10,000,000 tons could have been handled, and this amount of freight could have been secured by the canals but for the lack of seaworthy boats. The number of boats constructed annually during the last ten years has shown a constant decrease, and during the last five years the number of new boats added has not exceeded from six to ten in any one year. Older craft have been rapidly going out of commission, and a large number of boats navigating the canals are so dilapidated as not to be accepted as insurance risks.

The total appropriations for the fiscal years 1905–6 for lock tending and ordinary and extraordinary repair purposes were $17,000 less than the amount appropriated for the previous fiscal year. I believe that all legitimate demands will be met if $75,000 less shall be appropriated for these purposes by this Legislature than was appropriated last year. Such expenditures only as are necessary to maintain the present waterways until such time as the barge canal shall be available for traffic should be made. That economies may be effected without injury to the operation of the canals is well illustrated by the results accomplished on the Black River canal. This canal previous to 1905 was operated as two sections, which have been consolidated, with the result that the cost of maintenance and operation has been reduced from $36,380.23 in eight months of 1904 to $25,897.14 in the corresponding months of 1905; a saving of $10,483.09, or over 28.8 per cent. having been made without any loss in efficiency of operation.

BARGE CANAL WORK.

The total of obligations incurred and expenditures made by the Superintendent of Public Works up to December 4, 1905, for expenditures through his department on account of the barge canal, is $4,368,034.21. This includes an item of $39,586 for expenditures on account of the board of appraisers and examiners, consisting of three persons who are provided with a secretary, and who were appointed pursuant to Chapter 335 of the Laws of 1904. This board is given no power to settle with land owners absolutely, but may merely negotiate and recommend settlements. The total amount of land appropriated for barge canal purposes for the six contracts already awarded is about 2,100 acres. Of this amount the board of appraisers and examiners has made agreements for and the Canal Board has approved the purchase of about 71 parcels, containing about 475 acres having a value of about $116,000. It would seem that this machinery is unnecessarily expensive and unwieldy and that the work, both of examination and appraisal and of negotiating settlements, might better be done by single individuals working in an unostentatious manner after the method followed by railway companies in securing their right of way. While the gentlemen composing the board of appraisers have doubtless discharged their duty in accordance with the law, it would seem that a change of the method would produce favorable results, both as to cost and efficiency.

The amendment to the Code of Civil Procedure with reference to the jurisdiction of the Court of Claims, requiring claimants to file a notice of claim within six months after the alleged claim shall have accrued and giving the Superintendent of Public Works timely notice of claims, has enabled the State successfully to defend a class of cases which heretofore have been established because of lack of proof on the part of the State.

ATTORNEY GENERAL.

Many actions of the utmost importance have been conducted to a satisfactory conclusion by the law department of the State during the present year. In law suits relating to taxation the Attorney General has met with gratifying success. Election frauds have been vigorously and speedily prosecuted and convictions obtained in cases of great importance. The litigations of the numerous departments have received thorough consideration.

I recommend the consideration of the enactment of appropriate legislation looking to a more economical administration of the estates of defunct corporations which have been placed in the hands of receivers in actions brought by the people through the Attorney General upon reports of the Insurance or Banking Department. The present system involves serious and needless expense for receivers' and attorneys' fees which often falls upon people of moderate means and results in real hardship.[7]

I also recommend that inasmuch as assessments under the special franchise tax are made by the State Board of Tax Commissioners for the benefit of the localities only, which receive all the taxes due from the corporations, the law should be amended so as to relieve the Attorney General from the difficult and exacting duties now imposed upon him of defending these assessments, and to impose the responsibility and expense upon the localities that reap the benefits of the tax.[8]

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[7] Chapter 349, passed May 1, amended the act of 1883, chapter 378, relative to receivers of corporations, as amended in 1901, chapter 506, by imposing additional limitations on the amount payable to such receivers, and adding a section, 2a, regulating the compensation of counsel employed by receivers.

[8] Chapter 155, passed April 6, amended the Tax Law by adding a section, 45a, providing that in a proceeding to review an assessment of a special franchise, made by the State Tax Commissioners, counsel might be designated for them by the Attorney General. The expenses incurred by the Commissioners in such a proceeding were made a charge on the tax district affected by the assessment.

ELECTION REFORM.

Experience constantly points the way to the revision if not to the improvement of our election methods and laws. The tendency is properly towards honesty, secrecy and simplicity. Corrupt practices are now rigidly prohibited by the Penal Code. Faithful officials backed by patriotic citizens have been able to do much to purify the ballot and lessen the cost of elections, without the aid of additional legislation.

The new corrupt practice acts, modeled on the English statute, limit the legal expenses of candidates, call for sworn itemized statements from political committees of moneys expended by them, and permit a defeated candidate or an elector to secure a judicial investigation of any alleged case of corrupt practices at elections, the charge, if sustained, to invalidate the election and disqualify the guilty candidate. The object of such legislation is meritorious and meets my cordial approval. It must be remembered, however, that the adoption of such a measure, ideal in its terms and stringent in its provisions, will serve to eliminate or reduce corruption and venality and guarantee that public officers shall be chosen solely for ability and honesty only so far as it is in practical accord with public sentiment.

I recommend to your careful study the operation of such laws in other jurisdictions.

Political contributions by business corporations are illegal and *ultra vires*. No such corporation exists which includes among its lawful purposes the right to donate its moneys to influence an election. The practice is morally, as well as legally, wrong. The entity known as a corporation can have no political principles to sustain aside from those of the individuals who compose it. Its contributions are influenced by business and not by patriotism, and, like other investments, are made in the hope and expectation of financial return or to avert threatened pecuniary injury.

I recommend that the making of political payments by corporations be made a penal offense and that all officers and agents of such corporations knowing or approving thereof be subject to fine and imprisonment.[9]

A growing sentiment exists in favor of direct nominations for political office, without the intervention of nominating conventions more or less remote from popular control. It is urged that direct primaries call out a more genuine expression of the desires of the electorate, with greater freedom from boss control than the present system, bring party candidates nearer to the people and make them more directly responsible to the people. The object is praiseworthy and deserves recognition.

The new method as at present developed has grave faults as well as attractive features and a careful consideration of the effect of primary laws of other States should precede any attempt to model legislation thereon. While every inducement should be offered to the citizen to participate in the making of party nominations, our greatest need is not more laws but better morals, more respect for the spirit of law, and greater readiness to perform the duties of citizenship.

The ballot law should be simplified wherever possible, so as to permit the voter easily to give free expression to his intent without danger of vitiating his ballot.[10]

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[9] Political contributions by corporations were prohibited by chapter 239, passed April 16, which amended the General Corporation Law by adding a section, 41, which contained elaborate provisions on this subject. Corporations organized for political purposes were excepted from the prohibition. The act imposed severe penalties on corporations, officers and agents and others violating its provisions.

[10] Chapter 502, passed May 19, amended the Election Law, by adding an article, 9, regulating the transactions of political committees, and requiring reports by such committees showing the amounts received and expended by them, and authorizing judicial investigations of such transactions and expenditures.

Chapter 503, passed May 19, amended sections 41n, 41z, and 41zz of the Penal Code by imposing additional restrictions on campaign expenses.

CONSTITUTIONAL AMENDMENTS.

Seven amendments to the fundamental law of the State of great importance were adopted by the people at the recent election and became a part of the Constitution on January 1st. For the most part, these amendments gave rise to but little discussion and it is not strange that many electors, unable to act intelligently upon them, refrained from voting.

The practice is not to be commended of submitting numerous, disconnected and complicated constitutional amendments to popular vote, as in the case of four of the seven voted on, two years after their final approval by the Legislature, without the aid of an address to the people explaining their purpose and object. The provision that a majority of the electors voting thereon shall be sufficient to ratify constitutional amendments is necessary and salutary, but greater care should be taken to call forth a large and intelligent vote.

The amendments may be briefly summarized as follows:

State Debt. Article VII, § 4, as amended, provides that, in the future, provision may be made for the payment of the principal of any State debt, authorized by the people, within fifty years (instead of eighteen years, as formerly) from the time of the contracting thereof, and also allows the Legislature to provide for the issue of bonds to run for a period not exceeding fifty years in lieu of bonds heretofore authorized but not issued;[11] and Article VII, § 11, permits the Legislature, when the revenues from indirect taxation are adequate in amount, to reduce and in time to abolish the direct annual tax which the Constitution has previously required to be levied to pay the principal and interest of such debts. The Legislature should, in my

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[11] See note 1.

judgment, avail itself of the authority conferred upon it by these amendments.[12]

Judiciary. The amendment to Article VI, § 2, is self-operative and permits an appellate division justice to hold terms of court in any other department of the State while not actually engaged in performing the duties of such appellate justice in the department to which he is designated.

This is a minor measure of relief for crowded court calendars as compared with the amendment to § 1 of Article VI, permitting the Legislature from time to time to increase the number of justices in any judicial district in accordance with the population thereof.

The office of justice of the Supreme Court is one of the highest dignity and importance. The right of the citizen to a speedy determination of litigation is sacred and the law's delays are a scandal to the State. The taxpayers, who are supporting the judiciary, are entitled to call upon the courts to decide questions concerning which they cannot agree with their adversaries, and they should not be put to the alternative of making sacrifices or waiting several years for a judicial decision on the merits of their claims. The Legislature should proceed under this amendment with an eye single to the correction of evils due to an inadequate judiciary and with no thought of multiplying unnecessarily the number of justices to gratify the ambitions of impatient aspirants to the bench in districts now adequately provided for. The amendment is permissive merely. The authority it confers need not be exercised at once or in full. I recommend that a bill be framed with due consideration of the needs of each locality and with proper respect for the dignity of the judicial office.

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[12] Chapter 461, passed May 15, made provision for annual contributions from the general fund to the canal debt sinking funds in lieu of taxes to be raised under the act of 1895, chapter 79, known as the $9,000,000 act, and the Barge Canal Act of 1903, chapter 147, and also in lieu of the tax imposed by the act of 1906, chapter 302.

The same amendment permits the Legislature to erect a new judicial district out of the second judicial district as now constituted.[13]

Labor. The Legislature may now regulate and fix "the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof."[14]

Improvement of Highways. The Legislature may, under § 12 added to Article VII, create a debt, or debts, for the improvement of highways, not exceeding in the aggregate at any one time the sum of $50,000,000. Ample provision

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[13] Judicial district legislation at this session included the following:

Chapter 285, passed April 19, defined the first judicial district as composed of the county of New York, including specifically that part of Westchester county annexed to New York in 1895 by chapter 934. It was held in People ex rel. Henderson v. Westchester County, (1895) 147 N. Y. 1, that this annexation did not affect existing judicial districts, which were to continue as then organized until after another enumeration. The annexed territory then constituted a part of the second judicial district, hence the new statute which expressly included it in the first district.

Chapter 294, passed April 20, divided the second district into two districts, to be known as the second and the ninth districts. The ninth district was to be composed of the counties of Westchester, Putnam, Dutchess, Orange and Rockland. The second and ninth districts were to constitute the second judicial department. Justices of the Supreme Court in the former second district were to be justices of the district in which they respectively resided at the time of the division.

Chapter 693, passed June 1, provided for the election of eight additional justices in the first district, seven in the second, and three in the ninth. Chapter 694, passed June 1, provided for the election of one additional justice in the fifth district. Chapter 695, passed June 1, provided for the election of two additional justices in the eighth district.

[14] An amendment, approved in 1905, added to article 12, section 1, of the Constitution, provisions authorizing legislation on various questions relating to labor and the protection of employees. An act passed in 1906, chapter 506, revised and re-enacted several provisions of the Labor Law to which the constitutional amendment was deemed applicable.

is hereby made for payment by the State of its share of the cost of good roads, without the large appropriations from annual revenues which would otherwise be necessary to carry on the work under existing laws. I renew my recommendation of last year that the work of highway improvement be done in a thoroughly scientific manner under the comprehensive and symmetrical plan, so that permanent public works of real value shall result, and I also suggest that shade trees be planted along all improved roads for their protection and adornment, and that provision for the elimination of grade crossings be included in the plan of highway improvement, wherever practicable.[15]

Debt Limitation of New York City. A self-operating amendment to Article VIII, § 10, permits the City of New York to incur debts for the supply of water which shall not be included in determining the debt limitation of said city.

ALTERATION OF SENATE DISTRICTS AND APPORTIONMENT OF ASSEMBLYMEN.

The Constitution directs that at the first regular session after the return of every enumeration of the inhabitants of the State, the Legislature shall alter the Senate districts and reapportion the members of Assembly in accordance with the procedure set forth in detail in sections four and five of Article III. This duty will, no doubt, receive the prompt and careful attention that its importance demands. The rule of apportionment is clear and definite. It aims

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[15] Several acts were passed containing general amendments to the Highway Law, and relating to various features of highway administration. Chapter 469, passed May 16, provided for highway improvement bonds under the constitutional amendment, and the application of the proceeds of such bonds. Chapter 470, passed May 16, was intended to provide ways and means for the annual contribution to the highway improvement fund instead of raising such funds by direct tax. Chapter 471, passed May 16, made provision for the payment of interest on the highway improvement debt authorized by the Constitution.

to prevent gerrymandering and to produce, as near as may be, entire equality in the distribution of political power throughout the State.[16]

PROTECTION OF NIAGARA FALLS.

More than twenty years ago the State of New York sought to redeem the Falls of Niagara from vandalism by restoring the surrounding scenery to its primeval beauty and creating a State reservation as a free pleasure ground for the people. It has spent large sums of money in the establishment and maintenance of the Reservation and many thousands of visitors enjoy its privileges yearly. This State and the Dominion of Canada have in the past been engaged in an unworthy rivalry in granting franchises of incalculable value to power development companies permitting them to take water from the Niagara River above the Falls for commercial purposes. The privi-

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16 Chapter 431, passed May 14, established fifty-one Senate districts, adding one to the number, fifty, provided by article 3, section 3 of the Constitution, which additional district was authorized by article 3, section 4, and was given to Kings county. The same act apportioned one hundred and fifty members of Assembly among the several counties.

The validity of this act was challenged in three cases,— Re Sherrill v. O'Brien; Re Pendleton v. O'Brien; Re Payne v. O'Brien,— which were considered together by the Court of Appeals, and a final decision therein was rendered on the 3d of April, 1907,— 188 N. Y. 185. The Apportionment Act was held unconstitutional.

A new Apportionment Act, chapter 727, was passed at an extraordinary session of the Legislature which opened on the 8th of July, 1907. Under this act members of Assembly were chosen at the general election in November, 1907. The question whether Senators chosen at the general election in 1906 under the Apportionment Act of that year, which was afterward declared unconstitutional, could hold office for the term of two years for which they were chosen, was considered in People ex rel. Cassidy v. Whalen, (1907) 189 N. Y. 534, where it was held that Senators chosen under the act of 1906 were entitled to hold their offices for the term for which they were elected unless ousted by the Senate itself, which had the exclusive power and the exclusive right to judge of the title of any Senator to a seat therein, and that the title of a Senator could not be challenged before any tribunal except the House itself.

leges granted to these companies now constitute a real menace to Niagara. The State of New York cannot carry on the work of preservation effectively without the aid of an international agreement to protect the cataract and the river from spoliation. It can, however, in some degree, repair the mischief already done (1) by limiting the amount of water which may be taken from the river by the New York companies now engaged in developing power, (2) by repealing all undeveloped charters, of which several remain on our statute books, dormant if not defunct, and (3) by instituting legal proceedings for the forfeiture of the charters of any companies which may be guilty of misuse of their franchises or abuse or usurpation of powers. I earnestly desire to impress upon the Legislature a due sense of the responsibility of this State for the protection and preservation of the grandeur and beauty of Niagara Falls.[17]

LOCAL OPTION.

The Court of Appeals held some years ago that the Liquor Tax Law, like all previous excise laws, is not a "tax law" in the proper sense, as it does not have for its primary purpose the raising of revenue for the support of government, but is a law enacted under the police power, for the primary purpose of controlling and limiting the liquor traffic. The tax is for the protection of the community and not for the protection of the person from whom it is exacted. The local option provision for towns is inconsistent with a purpose to encourage the traffic or make it an ordinary source of revenue. Under this construction of the law it seems illogical for the State to impose the traffic upon cities, villages or other local civil divisions of the State, against the wishes of a majority of the inhabitants. Liquor legislation unsupported by local public sentiment is impotent, but it is entirely consistent with the theory of

[17] See *post*, p. 918, for a veto of a bill relative to the use of the waters of Niagara river.

the law to permit any locality to vote upon the question of prohibiting the sale of liquors. The disposition to look upon the law as a great revenue producer should not blind the Legislature to its moral duty to regulate and restrain the traffic in accordance with local sentiment and to aid the localities in regulating their own policy in regard thereto.[18]

REGULATION OF PUBLIC UTILITIES.

Private companies control our railroads, telegraphs, telephones, gas and water supplies and other services which have become necessary to the daily lives of many of our citizens. Such companies are quasi-governmental agencies, vested with the sovereign power to condemn private property for their uses. They are permitted to exist because the State delegates to them its own functions for convenience and economy and to promote industrial development. Such corporations should be tolerated only so long as their rates are reasonable and their service prompt and efficient.

It has been suggested by a learned justice of the Supreme Court of the United States that such companies have not even the constitutional right to a profit on their investments and that while they cannot be required to do business at a loss, they may be compelled to content themselves with a return equal to the cost of operation and maintenance. So radical a theory has not been adopted, but that it should be declared from the bench of our most eminent and conservative tribunal is a significant suggestion of the power of the people to regulate public service companies, or failing therein, to exercise their functions directly through government, State or local.

In Great Britain the rate for gas in municipal plants averages 64c. a thousand, while in a number of the cities it is as low as 50c. In the United States the average

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18 See People ex rel. Einsfeld v. Murray, 149 N. Y. 367. Bills to provide for local option in cities were introduced at this session but none was passed.

charge is $1.25 per thousand. It ill becomes the State to protect public service companies in extorting unjust charges from the consumer. Corporations are but associations of individuals. The act of incorporation does not make them outlaws nor deprive them of natural rights; nor, on the other hand, does it set them above the law. A careful investigation of the gas problem in New York City by a competent and conscientious legislative committee resulted in the recommendation of an 80-cent rate to be established by law. A *prima facie* case was made out. The action of the Legislature was subject to judicial review. Yet relief was refused. I urge a further consideration of this question on your part.[19]

STATE WATER SUPPLY COMMISSION.

The present law requires only municipal corporations to submit their plans for sources of water supply to the State Board for approval. This provision should be amended so as to include persons and private corporations condemning lands for sources of public water supplies.[20]

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[19] See *post*, p. 900, for memorandum on the eighty-cent gas bill for the city of New York which was approved April 3, and became chapter 125.

See also the act of 1907, chapter 429, which divided the State into two public service districts, and created a Public Service Commission in each. The first district was to be composed of the counties embraced in Greater New York, and the second district included the remainder of the State. Each commission was to be composed of five members to be appointed by the Governor and Senate. The act abolished the Board of Railroad Commissioners, the Commission of Gas and Electricity, and the office of Inspector of Gas Meters, and transferred their powers and duties to the Public Service Commissions. The Board of Rapid Transit Commissioners was also abolished, and its powers and duties were transferred to the Public Service Commission of the first district.

[20] The Governor's suggestion as to the extension of the powers of the State Water Commission was embodied in chapter 415, passed May 11, which required any person or waterworks company proposing to supply the inhabitants of any municipal corporation with water to submit the maps and profiles therefor to the State Commission before possessing power to acquire land or sources of water supply.

CHARITIES AND INSANE.

More patients have been discharged as recovered from the State hospitals for the insane during the year last past than for any year heretofore reported. The number of patients discharged in an improved condition is larger than for some years past. The net increase of our State hospital population has been the lowest for any one year of the past fifteen.

The steady improvement that has been going on in the management of the public and private charities of the State for the past ten years still continues and the institutions are for the most part in excellent condition. The United States census reports show that in no other State of the Union is such generous provision made for the care of the sick poor. Charitable institutions and hospitals for the insane cost the State upwards of eight million dollars annually, which is far in excess of the cost of any other department of the State government. The State appropriates about six million dollars for educational purposes and about one million each for its judiciary, prisons and national guard. State departments, commissions, etc., cost about one and a quarter millions annually, and the Legislature costs about the same amount. Charities and insane represent about 30 per cent. of the entire cost of the State government. The State is the greatest of modern philanthropists. It should care for, at public expense, all who are properly State charges and none who are not properly State charges. It should maintain its institutions for the welfare of the whole people and not for the accommodation of individuals. It should be just, rather than generous. It should maintain no palaces but only plain, comfortable, utilitarian homes. It should give equal attention to the prevention and to the cure of poverty and disease.

Philanthropic people and organizations may be relied upon to sound the alarm at the first indication that our hos-

pitals and charity homes are being exploited by politics or business. The crowded tenement, the sweat shop, child labor and kindred evils of congested centers of population warn us that health, life and decency are threatened by conditions which produce pauperism, disease and crime. If the State causes poverty, kind treatment of the pauper is a belated atonement. How to prevent insanity is a greater problem than how to treat the insane. To endeavor to prevent the unhappy conditions we are fruitlessly trying to cure or relieve today should be our aim.

The Craig Colony for Epileptics is in need of a large new building for the treatment of imbecile and insane epileptics and those requiring custodial care who cannot be treated to advantage by the cottage system but can better and more economically be cared for in a single building. Provision should be made for such a building, which should be plain and simple in construction but of adequate size to receive that class of epileptics still confined in the county almshouses.[21]

LABOR.

The Department of Labor cannot adequately discharge the duties imposed upon it by law without a sufficient force of active and capable inspectors, properly remunerated. Thirty-three inspectors now inspect approximately 35,000 factories and from 10,000 to 15,000 tenements in New York City. The number, never too large, is less than it was prior to 1901. The Department is crippled for effective work, particularly in the centers of population, where the greatest vigilance is required. It has neither the force nor the time to compel compliance with the law. I recommend such an increase in the number of factory inspectors as may be necessary to enable the Department to do system-

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[21] Chapter 374, passed May 10, made appropriations for new buildings and other improvements at the Craig Colony for Epileptics. The same act made appropriations for several other charitable institutions.

atic and thorough work. It would be well in this connection to grade salaries and make provision for the promotion of efficient and experienced employees and those possessing special qualifications.

The efficient and conscientious Commissioner of Labor advises me that the Free Employment Bureau, maintained by the State in New York City, is of doubtful expediency. In effect the bureau has become an intelligence office for women domestic servants. It seems unnecessary for the State to continue to maintain this agency. State regulation and supervision of private employment agencies would have a more far-reaching and beneficial effect upon the labor situation in the State in general.[22]

EDUCATION.

The reports from the cities and school districts throughout the State indicate a steady and healthy growth in the system along right lines. Between forty and forty-five millions of dollars have been expended by the public schools of the State while several millions more have been expended by the private academies and colleges. Additional teachers and instructors have been employed and the increased attendance indicates the interest which the people of this State feel in educational matters. The willingness with which boards of education comply with all requirements for additional facilities in the line of buildings, apparatus and equipment is indicative of the fact that nothing short of the best educational advantages will satisfy our people.

The number of days attendance in the high schools of the State is shown to be more than two millions greater than that of the previous year. This is partly, if not largely,

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[22] Chapter 158, passed April 6, repealed article 3 of the Labor Law relative to free employment bureaus in cities of the first class, and abolished the free employment bureaus already established.

due to the workings of the law providing free tuition in the high schools to pupils from districts where no high school is maintained.

ILLITERACY IN THE STATE.

Of our State population, 10 years of age and over, five and one-half per cent. can neither read nor write. There are eighteen States with a smaller percentage of illiteracy. The percentage has been precisely the same in the State of New York in the last three censuses. In 1870 it was about seven per cent. In the country at large it is above ten per cent. It is often assumed, apparently with undue haste, that the heaviest percentage of illiteracy is in the City of New York and among the more recent immigrants from other countries. The truth is that the percentage of illiteracy is decidedly lower in the city of New York than in several of our rural counties, and that there are more illiterate children in the State between the ages of ten and fourteen (ordinarily the last years of elementary school attendance), who are the children of native born than of foreign born parents. The facts are essentially the same as between the other cities and the rural districts.

The explanation is doubtless to be found in part in the superior and more convenient school accommodations in the cities, but there is some reason to think it may also be found in the more general enforcement of school attendance laws in the cities.

Certain it is that there is too much illiteracy in the State. It is often much larger than in the European countries with which we would be disposed to be compared. The figures for exact comparisons do not seem to be available, but such as we have seem to show too clearly that the percentage of adult illiteracy in the State of New York is slightly more than in England, France, Scotland and the Netherlands, but it is fifteen times larger than in Denmark, thirteen times larger than in Switzerland, and twenty times larger than in Norway and Sweden and the great German Empire.

We ought at least to do as well as the best of them in raising the uniform intellectual level. Whatever is done in the schools should be exactly done, and should relate to the conditions in which the people live and the vocations which they are to follow. The rate of illiteracy will be reduced by perfecting and enforcing the compulsory school attendance law and the child labor law. To these ends the interest of the Legislature is earnestly invited.[23]

PUBLIC HEALTH.

The State Department of Health is charged by law with functions of vital importance. The prevention and control of epidemics; the inspection of food and drink to prevent the sale of adulterated articles; the examination of plans for sewerage and sewage disposal, and the prevention and suppression of the pollution of public water supplies are a few of the more important of such functions. This work cannot be done without sufficient appropriations. It deals intimately with the usefulness and comfort of the people. The State has imposed these duties upon the Department and should provide adequately therefor. Readiness to prohibit and reluctance to make the prohibition effective are companion vices of our legislation. They result in a lamentable array of commendable but emasculated statutes, which should be vitalized or repealed.[24]

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[23] By chapter 490, passed May 17, amending section 77 of the Labor Law, no minor under sixteen years of age could be permitted to begin work before six o'clock in the morning nor continue work after seven o'clock in the evening, nor work more than nine hours during the day. At that time the Labor Law permitted children to work until nine o'clock in the evening. The same act prohibited the employment of children under sixteen after seven o'clock in the evening in mercantile and other specified establishments of cities of the first class. The same act reconstructed section 162 of the Labor Law relative to the employment of children between twelve and sixteen years of age, modifying the previous provisions in important particulars.

Chapter 375, passed May 10, prohibited the employment of any child under sixteen years of age, or of any female, in any mine or quarry.

[24] Chapter 39, passed March 13, amended in several particulars section 21 of the Public Health Law, relative to the powers and duties of local boards of health.

AGRICULTURE.

The decrease of our rural population which has gone on steadily for many years must be checked, if any practicable method can be devised, in order to counteract the drift of population to the city and to prevent the depreciation of farm values. Intensive agriculture must take the place of the old-fashioned methods now adapted only to large farms of high natural productivity. We should produce more milk, cream, butter, poultry, eggs and fruit. Scientific instruction in modern methods serves to elevate and dignify the farmer's vocation, and make it more remunerative and agreeable.

The State Fair, under the management of the State Fair Commission, has shown rapid development in all its departments. The number of the exhibits and the attendance have steadily increased. Notwithstanding the unfavorable weather, the attendance last year was larger than ever before — exceeding 50,000 on a single day. The Commission was able to turn back to the State Treasury last year more than $30,000.

The Fair has outgrown the present accommodations. The buildings are inadequate in number and size and are ill adapted properly to house the exhibits. In consequence a large proportion of such exhibits have to be placed in tents and temporary structures.

The time seems to be near when a comprehensive plan should be prepared and adopted for the construction of a new, harmonious and complete system of modern permanent buildings adequate to the needs of the various departments of the Fair. Much has been done to emphasize and to maintain the commercial, financial and industrial supremacy of the State; the same encouragement should be extended to the development of our great agricultural interests.[25]

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[25] An act, chapter 757, passed at the extraordinary session in 1907, required the State Fair Commission to examine the State fair grounds and

FOREST, FISH AND GAME COMMISSION.

This Department offers an ample field for the activities not only of the lover of open-air sports and pastimes, but also of the administrative officer, having in charge vast property holdings of the State, which must be kept free from unlicensed intrusion and which might be made a source of revenue to the State. Governor Black said in 1898 that "the time will come when the State will reap a large revenue for itself and still retain the woods, open to the public, protecting the sources of water, growing and yielding under intelligent cultivation." * It is to be trusted that the State will not forever ignore the theory and practice of scientific forestry and that it will not only protect the wilderness constituting the forest preserve in its natural state but will also encourage by precept and example the cultivation of forest tracts for economical purposes. No department calls for more unselfish devotion to the interests of the State. It should be administered, as I believe it now is, primarily with a view to the protection of our forests, fish and game, and secondarily with a view to making the Department more nearly self-sustaining, through the vigorous prosecution of wrongdoers and through the development of revenue features.

The Forest, Fish and Game Law is confusing because it includes many amendments incorporated in it at different times. It should be carefully re-codified and made clear and consistent and as permanent as possible.

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buildings at Syracuse, and to prepare plans for an adequate scheme of development thereof. The commission was required to invite competition in the preparation of plans and select three which in its judgment most nearly complied with the scheme adopted by the commission. A report was to be submitted to the Legislature of 1908, showing the action taken by the commission under this act.

* See *ante*, vol. 9, p. 837.

PRISONS AND PENAL LEGISLATION.

I have appointed, under the provisions of Chapter 718, Laws of 1905, a commission to inquire as to the most practical methods of providing modern prison buildings, which commission will report to the Legislature on or before the 1st day of February, 1906.[26]

I have also appointed, under the provisions of Chapter 714, Laws of 1905, a commission to make inquiry into the operation of the probation system of the State and report to the Legislature thereon.[27]

The reports of these commissions should be of great value. The State should carefully frame its system of sentencing, releasing on parole, and caring for prisoners in penal institutions so that crime may be lessened and that punishments may tend towards reformation rather than retribution.

Your attention is directed to what seems an anomalous condition in regard to our laws regulating the punishment of boys, sixteen years of age and over, convicted of misdemeanors. No class needs reformatory treatment and trade instruction more than these boys, of whom some ten thousand are committed annually to jails and penitentiaries, because no other provision is made for them. Youthful male felons may be sent to Elmira; boys under the age of sixteen may be sent to Randall's Island or Rochester; girls and young women to Hudson, Albion or Bedford. Some provision should be made to save these boys from permanent criminal careers and keep them out of jails and penitentiaries, where they can receive no reformatory treat-

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[26] This commission presented its report to the Legislature on the 29th of January, 1906.

Chapter 670, passed May 31, authorized the appointment of a commission by the Governor to select a site for a prison to take the place of the Sing Sing prison. The site was to consist of not less than five hundred acres situated in the eastern part of the State south of Poughkeepsie.

[27] A report from the Probation Commission was transmitted to the Legislature on the 12th of March, 1906. Assembly document No. 50.

ment. The county penitentiaries might be taken under State control and one or more of them utilized for this purpose. No good reason seems to exist for dividing between State and county the charge of persons convicted of crime. All such have sinned against the State and should be under State supervision. The population of the penitentiaries has decreased from 4608 in 1895 to 2229 in 1905, a decrease of more than 50 per cent. The jails should be used only for the detention of civil prisoners and persons awaiting trial, and possibly, petty misdemeanants sentenced for short terms for public intoxication and minor offenses.[28]

MASSACHUSETTS–NEW YORK BOUNDARY LINE.

The State Engineer and Surveyor, in co-operation with the Commonwealth of Massachusetts, relocated and remonumented the entire boundary line between New York and Massachusetts as long ago as 1899. Bills were introduced at the first session thereafter in the legislatures of both States, establishing the boundary line. The Massachusetts bill became a law to "take effect when an act shall have been passed by the State of New York establishing the line." The New York bill was never progressed. In view of the cost and importance of the work it seems desirable that this State should adopt the line thus established. It involves jurisdiction over a wedge of land 58 feet wide and the question should be forever settled without delay.

SPECIAL LEGISLATION.

The Constitution provides that private and local bills shall not be passed in certain enumerated cases.[b] Equally objectionable are bills granting corporate charters where the objects of the corporation could be obtained under

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[28] See *ante*, p. 726, note 7, for a sketch of statutes relating to a training school for boys.

[b] Const. 1894, art. 3, § 18.

general laws;[c] bills legalizing bond issues, of which the number is increasing yearly; bills changing names of corporations; private claim and escheat bills; private bills legalizing acts of notaries public and other officers; and bills private or local in their purpose but general in form. Except in rare instances general legislation can be drafted to cover all proper cases. Unnecessary special statutes not only needlessly swell the volume of laws but also disregard the salutary maxim of "Equal rights to all, special privileges to none." The expense of passing private bills should be borne by the parties in interest and not by the State.

WORK AND EARLY ADJOURNMENT.

I would urge upon the Legislature the importance of beginning serious work at once in order that the labors of the session may not be unnecessarily prolonged. Last winter only twenty-four of the 760 laws were approved before March 1st; only 103 were approved in the month of March. The number of 30-day bills was 594, of which 384 became law, making more than one-half of the total for the year.

The rush of the close of the session prevents proper consideration and leaves an indigestible mass of bills to be disposed of by the Governor after adjournment. Both the Legislature and the Governor should have a better understanding of proposed legislation than is possible when hurry and confusion prevail.

Much time would be saved and the recall of bills for amendment would often be avoided by more careful reading of bills before final passage and the correction of typographical and other errors.

FRANK W. HIGGINS.

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[c] Const. 1894, art. 8, § 1.

SPECIAL MESSAGES.

January 10. To the Senate: Transmitting the annual report of the Adjutant General for the year 1905.

January 10. To the Senate: Transmitting a report made by the delegation representing the State of New York at the National Immigration Conference held in New York City, December 6 to 8, 1905.

January 10. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 10, 1906.

"I have the honor to transmit herewith a proclamation issued by the Governor of Florida in relation to the International and Isthmian Exposition to be held in Tampa, Fla., in 1908, in honor and celebration of the commencement of work on the Panama canal by the government of the United States.

FRANK W. HIGGINS."

The following is the proclamation:

STATE OF FLORIDA:

EXECUTIVE DEPARTMENT,
TALLAHASSEE, FLA., *December* 30, 1905.

Whereas, It has been suggested that an International and Isthmian Exposition be held in the city of Tampa, Fla., during the months of January, February and March, in the year of our Lord 1908, in honor and celebration of the commencement of work on the construction of the great Panama canal by the government of the United States; and,

Whereas, Such an exposition will direct the attention of the whole world to the unsurpassed climate of the State of

Florida, its boundless agricultural, mineral, industrial and commercial resources, and its superior maritime advantages as the highway;*

Therefore, I, Napoleon B. Broward, Governor of the State of Florida, do hereby issue this, my Proclamation, calling said International and Isthmian Exposition to be held in the city of Tampa, Fla., commencing in the month of January, in the year of our Lord 1908, in celebration of the commencement of work on the Panama canal by the government of the United States; and I call upon and urge all the citizens of the State of Florida to unite their efforts in support of said exposition, and I also request and urge the Senators and Representatives of the State of Florida in the Congress of the United States to invite and secure from said Congress an indorsement of said exposition and a reasonable appropriation in aid thereof.

The Governors of the several States and Territories comprising the United States of America are hereby cordially invited to secure the co-operation of their State Legislatures in aid of said exposition, and are requested and urged to secure a proper representation of the resources of their respective States in the exhibits at said exposition; and,

His Excellency, the President of the United States, is hereby requested and urged to issue his proclamation through the State Department of the United States, inviting foreign countries to participate in said exposition.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State to be [L. S.] affixed at Tallahassee, the capital, this the 30th day of December, A. D. 1905.

N. B. BROWARD,
Governor.

By the Governor, attest:

H. CLAY CRAWFORD,
Secretary of State.

* So in Assembly Journal.

January 29. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *January* 29, 1906.

"In accordance with the mandate of the Constitution of the State (Article III, Sec. 4), provision was made by the last Legislature, by Chapter 83 as amended by Chapter 144 of the Laws of 1905, for an enumeration of the inhabitants of the State, for the purpose of redistricting the State for the election of senators and members of assembly.

The inquiries made on the schedule used at the enumeration of 1905 included the following subjects:

1. Residence (street and house number).
2. Name (surname, given name, and middle initial, if any).
3. Relationship to head of family (wife, son, daughter, boarder, servant, etc.).
4. Color or race (white, black, Chinese, Japanese or Indian).
5. Sex (male or female).
6. Age at last birthday (single years of age).
7. Nativity (country of birth).
8. Number of years in the United States (for persons of foreign birth only).
9. Citizenship (citizen or alien).
10. Occupation, trade, or profession (including school attendance, in months, for persons of school age).
11. Class (employer, working on own account, or salary or wage worker, for persons gainfully employed).
12. Residence (borough, city or town, and county) at time of admission (for inmates of institutions only).

Of the above named items, citizenship is the only one on which statistics have been compiled, which compilation has been reported to the Legislature as required by law.

The act calling for the enumeration of 1905 did not contemplate a report of the population of the State, showing in detail its distribution according to color, sex, age, nativity and occupation, neither did it contemplate a report of the attendance and non-attendance at school of children of school age.

Information for such tabulation and report was secured by the enumerators in June last and is now in the custody of the Secretary of State.

The Commissioners of Education, Health and Labor and the Director of the United States Census are urgent in their request for such detailed information.

The Commissioner of Labor desires a complete tabulation of the returns on occupation for guidance in the collection and compilation of statistics of employment. He desires the tabulation of persons returned as carrying on gainful work *in the home,* for the more effectual enforcement of the law regulating tenement manufactures.

In order to provide means for the better development of the question of occupation, particularly from the labor standpoint, inquiry was made to ascertain whether the person enumerated was an employer, was working on his own account, or a worker on salary or wages. This did not add materially to the work of the enumerator and it will furnish information of great value in the study of the question of labor and industry.

The demand for information respecting the employments exercised by the workers of the State is constant and widespread, coming from both employers and employees, from public men and scholars.

The State Commissioner of Education desires to secure from the census schedules for all cities of ten thousand inhabitants or more a transcript of the name, age, residence, name of parent, and attendance at school in months, if any, of each person from six to sixteen years of age,

both inclusive, for the purpose of determining whether or not they are complying with the Compulsory School Attendance Law and it is intended that this transcription, if made, shall take the place of the biennial census which would be required to be taken in those cities next October under the provisions of Chapter 550 of the Laws of 1895.

The State Commissioner of Health is desirous of obtaining information concerning sex, age, race and nativity of all inhabitants of the State to aid him in the more thorough preparation of tables of vital statistics.

The United States Census Bureau at Washington, D. C., is required by Congress to compile and publish annually a report upon the deaths in the "registration area" which includes New York State, the New England States, New Jersey, Michigan, and all of the cities of the United States. This area has a total population of more than 30,000,000.

This requirement affords a basis for the gradual development of a national system of vital statistics by cooperation between the State or municipal governments and the Federal Government.

To make these death records of value for public health, a subject of far more direct importance to the State and municipal governments than to the Federal Government, they must be correlated with census information giving the population classified by sex, age, race and nativity.

This information for Massachusetts, Rhode Island, New Jersey and Michigan, has been, or will shortly be available, through the publication of the results of the censuses in those States.

If similar information can be obtained from the State census of New York this will give it for half of the population of the "registration area" and make trustworthy estimates possible for the whole.

In default of this information the Census Bureau can not venture at present or before 1910 upon any interpretation of its tables for deaths in New York State.

In that case the work done by the Census Bureau for New York State will be of very little value to the State or the nation until the next Federal census is taken and its results published.

The United States through its Census Bureau is expending large sums of money in collecting health and vital statistics, and now asks through the Director of the Census, for the co-operation of this State in furnishing a tabulation of statistics relating to color, sex, age, nativity and occupation.

The required information now in the possession of the Secretary of State can not be tabulated under existing law, notwithstanding its great scientific value, the need of the information by the United States Census Bureau and the needs of our own State officers, as above expressed.

Several States have compiled or are compiling their population statistics by sex, nativity and age periods as desired by the Director of the United States Census Bureau. New York with its more than 8,000,000 inhabitants, is easily the first in importance of all these States, and the necessity of provision for the preparation and publication of an adequate report in keeping with its rank should not be questioned.

Expert statisticians estimate that a proper tabulation and publication of the work as outlined, will cost $100,000.

In the interests of the science of vital statistics, and in order to furnish the Commissioner of Labor and the Commissioner of Education with information necessary to them to carry on the work required of them, the Legislature of the State of New York should, in my judgment, consider the expediency of making necessary provision for the completion of this work in this State.

FRANK W. HIGGINS."

February 12. To the President of the Senate:

FEBRUARY 12, 1906.

"TO THE PRESIDENT OF THE SENATE.—I am in receipt of a resolution of the Senate adopted February 7, 1906, which reads as follows:

'*Whereas,* The Assembly has passed a joint resolution which, among other things, calls for an investigation of the Banking Department of the State of New York and the methods thereof, which resolution was referred to the Committee on Finance of the Senate; and

Whereas, It is desirable that such committee should have before it upon the consideration of such resolution all communications in the nature of charges, if any, which have been made to the Governor reflecting upon the administration of the Banking Department, together with any action taken thereon by him; therefore

Resolved, That the Governor is respectfully requested to transmit to the Finance Committee of the Senate such communications and the action taken thereon by him so far as the same may be compatible with the public interests.'

In response to such request, I herewith transmit to you all the papers in the matter of the charges preferred against Frederick D. Kilburn, Superintendent of Banks, by George von Utassy, in connection with the Merchants' Trust Company and all the papers in the matter of the charges preferred against Frederick D. Kilburn, Superintendent of Banks, by the Organization of Depositors of the German Bank of Buffalo, in connection with the affairs of said bank. No other complaints against the Superintendent of Banks have been filed with me. In the case of the German Bank, I had frequent interviews in the city of Buffalo with the depositors' committee and other persons,

and my decision in that matter was based in part on information obtained in such interviews, which are not a matter of record.[29]

FRANK W. HIGGINS."

February 14. To the Assembly:

Veto of a bill entitled "An act to authorize the town board of the town of Tompkins, Delaware county, to construct an iron bridge across the west branch of the Delaware river at or near the present fordway at Granton post office in said town, and to issue the bonds of such town therefor."

"My objections thereto are that the bill is unconstitutional and unnecessary special legislation being objectionable for three reasons:

First. The bridge provided for by the bill can be built and bonds issued to raise money to pay therefor under the existing general law. (County Law, Sec. 69.)

Second. Section 69 of the County Law provides that if a town contains any portion of the lands of the forest preserve, the Board of Supervisors shall not authorize said town to borrow moneys for this purpose without the written approval of the Forest, Fish and Game Commission, except to pay a debt of the town incurred in good faith pursuant to section 10 of the Highway Law. The forest preserve includes the lands owned by the State in Delaware county (Forest, Fish and Game Law, section 216), and the State owns lands in the town of Tompkins. If this bill should be approved it would supersede the above provision requiring the consent of the Forest, Fish and Game Commission.

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[29] See *post*, pp. 878, 879, for further action in the Kilburn matter.

The Assembly passed a concurrent resolution for an investigation of the banking department, but it was not concurred in by the Senate. In the Senate a bill was passed providing for a commission to inquire into the operation of the banking law, the administration thereof by the banking department, and the expediency of revising or amending such law, but the bill was not passed by the Assembly.

Third. The Constitution (Article III, Section 18) provides that (with certain exceptions not applicable to this case) the Legislature shall not pass a private or local bill providing for the building of bridges."

This bill was not passed over the veto.

February 19. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 19, 1906.

"During the past year historical societies and public spirited citizens have been looking forward to some action on the part of the State and the City of New York for the appropriate celebration of the three-hundredth anniversary of the discovery of the Hudson river by Henry Hudson in the year 1609, and of the centennial anniversary of the first use of steam in the navigation of the Hudson river by Robert Fulton in the year 1807. These two events in the history of the Hudson river are of such interest to the State of New York and to the United States, that it seems fitting that a proper celebration of each should be had.

Having in view such official action, I acceded to the request of many gentlemen interested in the plan, to name a committee of distinguished citizens, with whom a committee named by the Mayor of the city of New York should co-operate to formulate plans for a celebration of the tercentenary of the discovery of the Hudson.

It has been suggested by this committee, after long and careful consideration, that both events might, with propriety, be celebrated together in the year 1909, and that the union of these two observances would strengthen each and would more effectually concentrate upon the affair the attention of the world.

The committee now acting has no official status and is wholly an informal and unofficial body. In order to give it official standing, and to provide it with sufficient funds

for preliminary expenses, I recommend to the Legislature the consideration of a bill entitled "An act to establish the Hudson-Fulton celebration commission, and to prescribe the powers and duties thereof, and making an appropriation therefor," a copy of which is herewith transmitted for your consideration.[30]

FRANK W. HIGGINS."

February 26. To the Senate: Transmitting the annual report of the Trustees of the Cooper Union.

February 26. To the Assembly:

Veto of a bill entitled "An act authorizing and empowering the board of trustees of the police pension fund of the police department of the city of Buffalo to grant and allow a pension to Michael Dowd."

"My objections thereto are as follows:

The bill authorizes the trustees of the police pension fund of the city of Buffalo to grant and allow from the police pension fund a pension to Michael Dowd not exceeding $75 per month, pension to commence on the 10th day of April, 1905, the date of retirement of said Dowd from the police force.

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[30] In compliance with the Governor's recommendation, an act, chapter 325, was passed April 27, "to establish a Hudson-Fulton Celebration Commission, and to prescribe the powers and duties thereof." The act named 215 persons who had been previously designated either by the Governor or the Mayor of New York as members of the committee referred to in the message, and they were constituted a body corporate for the purposes contemplated by the statute. The act declared the objects of the corporation to be "the public celebration or commemoration of the tercentenary of the discovery of the Hudson river by Henry Hudson in the year 1609, and of the use of steam in the navigation of said river by Robert Fulton in the year 1807, in such manner or form, either permanent or temporary, as may be found appropriate by said commission." The act appropriated $25,000 and authorized the city of New York to aid in carrying out the purposes of the commission.

The charter of the city of Buffalo (Laws of 1891, chapter 105, section 211) regulates the police pension fund and the persons who are entitled to pensions thereunder. If the pension sought to be conferred by this bill can not be granted under the provisions of the charter, the charter should be amended generally to cover all cases in the same class."

The bill was not passed over the veto.

March 8. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill to supplement the provisions of law relating to the department of assessment and taxation of the city of Syracuse. The bill was passed and became Chapter 75 on the 21st of March.

March 13. To the Senate:

Veto of a bill entitled "An act to amend the tax law in relation to taxation of the personal property of non-residents." [31]

"My objections thereto are as follows:

While the chattels of non-residents having an actual situs in the State of New York may properly be subjected to taxation in this State, and while the rule which makes personal property taxable at the domicile of the owner is doubtless applied so as to enable a class of individuals to avoid liability under the Personal Tax Law by maintain-

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[31] This bill was not passed over the veto, but another bill on the same subject was passed and became a law, chapter 248, on the 16th of April. The act added to section 7 of the tax law a new subdivision, 2, providing that "the personal property of non-residents of the State having actual situs in the State, and not forming a part of capital invested in business in the State, shall be assessed in the name of the owner thereof for the purpose of identification and taxed in the tax district where such property is situated, unless exempt by law." The provision did not apply to money or negotiable collateral securities, deposited by, or debts owing to, such non-residents, nor did it affect the taxation of mortgages on real property.

ing a residence in another State, although they actually keep valuable personal property in this State and contribute nothing for the protection of that property given to it by the local police and fire departments, I am not impressed with the practicability of this bill as an effective agency for the correction of existing evils in this connection.

The Tax Law (Section 3) now provides that "all personal property situated . . . within this State is taxable unless exempt from taxation by law." Section four of the Tax Law indicates what property shall be exempt from taxation. This bill provides *where* personal property owned by non-residents shall be taxed and to that extent it is an improvement on the existing law. It does not, however, state *how* it shall be assessed. The general rule set forth in Section 21 of the Tax Law requiring the assessors to set forth in the first column of the roll the names of "all *taxable persons* in the tax district" could not apply here, because under this amendment the non-resident is not a taxable person. The language of the bill is that "the personal property . . . shall be taxed." It remains uncertain whether the assessment would be against the property itself, which would be bewildering beyond conception, or under the name of the owner, in which case it would be of questionable validity. The assessment should, for the purposes of identification, be set out against the name of the owner of the property whether he is a "taxable person" or not.

Furthermore, drawn as it is, it is at least doubtful whether the amendment would not be construed as including the entire law governing taxation of personal property of non-residents, thereby superseding the general exception contained in subdivision 13 of Section 4 of the Tax Law, which now exempts "the products of another state, owned by a non-resident of this State and consigned to his agent in this State for sale on commission for the benefit of the owner."

Tax laws should be drawn with the care and exactness of penal statutes, so that doubts and fears as to the possible meaning thereof shall not exist, where they may be avoided by the apt use of language. It can not be said that this bill is free from criticism on the ground of ambiguity. Such criticism might be obviated by a few verbal changes, but in its present form I think that the enactment of this bill would create much uneasiness and would produce little, if any, revenue.

March 21. To the President of the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 21, 1906.

TO THE PRESIDENT OF THE SENATE:

Under date of February 12, 1906, in compliance with a resolution of the Senate, adopted February 7, 1906, I transmitted to you for the information of the Finance Committee of the Senate, all the original papers in the nature of charges which had been made to me reflecting upon the administration of the Banking Department, together with my action thereon.

Unless the public interests will be served by the further retention of such papers by said Committee, I would respectfully request that they be returned with all convenient dispatch to the files of the Executive Chamber, together with a statement of the action, if any, taken by the Committee thereon.

FRANK W. HIGGINS.

According to the executive records the papers in the Kilburn case were returned by the Senate to the Governor on the 28th of March, 1906. For the message transmitting the papers to the Senate, see *ante,* p. 872.

April 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amend-

ing "An act in relation to the traffic in liquors, and for the taxation and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws." The bill was passed and became chapter 183 on the 10th of April

April 11. To the Speaker of the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 11, 1906.

TO THE HONORABLE, THE SPEAKER OF THE ASSEMBLY:

I am in receipt of a resolution of the Assembly, adopted April 2, 1906, which reads as follows:

'*Resolved,* That the Governor be requested to transmit to the Assembly Committee on Ways and Means the papers, documents and information relative to certain charges against Superintendent Kilburn, which he lately sent to the Senate Committee on Finance, to enable the Assembly to act with full knowledge of all the facts in the pending resolution for investigation.'

In response to such request I herewith transmit to you all the papers which I lately sent to the Senate Committee on Finance.

In the case of the German Bank, I had frequent interviews in the city of Buffalo with the Depositors' Committee and other persons, and my decision in that matter was based in part on information obtained in such interviews, which are not a matter of record.[32]

FRANK W. HIGGINS."

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[32] The resolution quoted in this message was preceded by the following preamble:

"*Whereas,* This Assembly adopted a joint resolution providing for an investigation of the State Banking Department, and

Whereas, The said resolution has been held in the Senate Finance Committee, and the Senate has passed a substitute commission bill which is commonly believed to be an evasion of investigation, and

Whereas, This Assembly must now decide whether it will abide by its original attitude or discover some other means of enforcing the investigation for which it has voted." See *ante,* p. 872.

April 12. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill entitled "An act to amend chapter four hundred and thirty-two of the laws of nineteen hundred and four, entitled 'An act to regulate the keeping of employment agencies in cities of the first and second class where fees are charged for procuring employment or situations,' generally, and to limit its application to cities of the first class." See certificate of April 19.

April 16. To the Senate:

Veto of a bill entitled "An act to amend section thirty-two hundred and thirty of the code of civil procedure, relating to costs in an action."

"My objections thereto are as follows:

This bill provides that in a class of actions, commonly known as stockholder's actions, 'the expenses incurred by the plaintiff in the prosecution of such action and his costs shall be fixed by the court' and shall be paid by the corporation defendant in whose right and for whose benefit the action is brought. It does not, however, include tax payers' actions, brought in the right and for the benefit of municipalities.

The section of the Code of Civil Procedure now applicable to such cases provides that the court may upon the rendering of a final judgment, in its discretion, award costs (including statutory disbursements) to any party, in such sum not exceeding the total amount authorized by statute as to the court shall seem just. In any difficult or extraordinary case where a defense has been interposed, the court may grant an additional allowance to the plaintiff not exceeding five per centum upon the amount recovered or claimed or the value of the subject-matter involved, but not exceeding, in the aggregate, $2,000.

It is not proposed to allow the plaintiff to recover, in addition to costs as above defined, his entire expenses in actions included within the terms of this bill, without limitation as to the ratio of such expenses to the recovery and without limitation as to amount, except that the sum allowed shall be what, in the discretion of the court, is just and reasonable.

Costs are compensation for the expense incurred by a party in the prosecution of an action. The prevailing party is not allowed to recover from the adverse party the actual expense he has been put to in carrying on his suit, but is permitted to recover only certain sums fixed by the code. In many cases the prevailing party is put to a greater expense than he is permitted to recover from the defeated party, and hardship results, for it is a matter of common knowledge that the expenses of a successful litigant may consume his entire recovery. Unless the entire policy of our law as to the allowance of costs is changed, and the whole subject of allowances is to be left to the discretion of the court, the legislature should hesitate before making exceptions, and in all cases should limit the amount to be allowed to a certain percentage of the recovery and within a fixed maximum sum. The present bill creates an arbitrary exception to the general rule, not even including all of a class, and it would permit the attorney for the successful plaintiff to divert the entire recovery, and more, from the corporation to himself, provided always his charges were just and reasonable in the judgment of the court, for this bill does not even provide that the expenses thus allowed shall be paid out of the sum recovered for the benefit of the corporation."

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to regulate street railway fares in the county and borough of Queens," and a bill entitled "An act to regulate street railway fares in the borough of Brooklyn."

"The purpose of each of these bills is to compel all corporations operating street surface railroads in said boroughs to furnish tickets, in quantities not less than twenty-five, to pupils attending any school in said boroughs, at a maximum rate of three cents each, for transportation on the railroads of said corporations during school hours. They originate in a laudable desire to lighten the burdens of the people who have children of school age who must travel for some distance to attend school, and they would receive my approval if they did not, in my judgment, go beyond the limits of the law-making power of the State. My objections thereto are:

First. The said bills are unconstitutional in that they violate that part of the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.[c] The Supreme Court of the United States, in the Michigan Mileage Book Act[d] (173 U. S. 684), held that the statute compelling railroad companies within that State to sell one-thousand-mile tickets at a reduced rate was unconstitutional and therefore invalid. The court says that 'the power of the Legislature to enact general laws regarding a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in the community, and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. * * * If the general power exist, then the Legislature can direct

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[c] U. S. Const. 14th Am.

[d] Lake Shore and Michigan Southern Railway Company v. Smith.

the company to charge smaller rates for clergymen or doctors, for lawyers or farmers or school teachers, for excursions, for church conventions, political conventions, or for all or any of the various bodies that might desire to ride at any particular time or to any particular place. * * * If the maximum rates are too high in the judgment of the Legislature, it may lower them, provided they do not make them unreasonably low as that term is understood in the law. But it cannot enact a law making maximum rates, and then proceed to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper.'

The reasoning of this case is not upset by the later Massachusetts decision in the case of Commonwealth v. Interstate Consolidated Street Railway Company, decided in 1905 and reported in 187 Mass. 436. The court there seeks to distinguish the mileage book case from a case involving the constitutionality of an act discriminating between the pupils of the public schools and other persons, in relation to rates of transportation on street railroads and says that inasmuch as the education of children is a subject for legislation which has occupied the thoughts of our lawmakers from early times, it cannot be said that the Legislature may not concern itself with the transportation of children to the public schools, in the interest of popular education, just as it provides such children with books and other necessary articles; and that such an act may be sustained as a police regulation in the interest of education, provided the street railway companies can carry the children without causing a loss to such corporations. But the Massachusetts act related to public school children only, while these bills relate alike to all pupils, young or old, in all schools, public or private, and the court decided that there was nothing to prevent the defendant company from making its regular fare for passengers within the limits of the town six or seven cents instead of five cents and charging the pupils

in the public schools one-half of the price so established instead of three cents. It thus appears that in Massachusetts there was no maximum fare of five cents with respect to street railways in that State, and that the bill in question merely required such companies to charge public school children one-half the regular fare. The railroad law of this State prohibits any street railroad corporation from charging any passenger any more than five cents for one continuous ride, while these bills fix the rate for school children at three cents. Therefore, such bills seem to fall clearly within the rules laid down in the mileage book case, against arbitrary enactments in favor of persons or classes.

Secondly. The said bills are unconstitutional in that they deprive the corporations of their property without due process of law.[e] Statistics furnished by the Board of Railroad Commissioners of this State, indicate that the expenses per passenger of the roads affected vary from 3.17 cents to 4.97 cents, and that in every case the expense per passenger is more than three cents. Therefore it is manifestly unjust and unlawful to ask the companies to carry school children for less than the average cost.

The courts of this State have repeatedly held that while rates of fare on railroads, and charges by other public service corporations, are subject to legislative regulation, no such corporation can be compelled to render any particular class of services or transport any particular class of persons for nothing or at a loss.[f] Corporations are but associations of individuals, and although through such association and the accumulated wealth thus placed at their control, they may at times be guilty of extortion and oppression in their dealings with the public, in which cases they should be brought sharply to account, yet it is but little better than demagogy for the Legislature to pass laws

[e] Const. 1894, art. 1, § 6; U. S. Const. 5th and 14th Am.

[f] See Wilson v. United Traction Co., (1902) 72 App. Div. 233, free transportation of firemen and policemen.

which, by reason of provisions amounting to unconstitutional discrimination and taking of property, cannot be sustained in the courts."

The bills were not passed over the veto.

April 19. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill entitled "An act to amend chapter four hundred and thirty-two of the laws of nineteen hundred and four, entitled 'An act to regulate the keeping of employment agencies in cities of the first and second class where fees are charged for procuring employment or situation,' generally, and to limit its application to cities of the first class." Second certificate. The bill was passed and became Chapter 327 on the 27th of April.

April 19. To the Assembly:

Veto of a bill entitled "An act to amend the tax law, in relation to the taxation of debts secured by mortgages." [33]

"The Legislature of 1905, by a vote of eighty-eight to sixty-one in the Assembly, and twenty-nine to eighteen in the Senate, passed a bill which received Executive approval, which imposed an annual tax of one-half of one per cent. on all mortgages, in lieu of the general property tax. The Legislature of 1906, by a vote of eighty-four to thirty-six in the Assembly and thirty-six to thirteen in the Senate, has now passed a bill which repeals the act of 1905, and imposes a single tax of one-half of one per cent. on mortgages of real property, payable, upon the execution of such mortgage, to the recording officer of the county in which the real property is situated.

[33] This bill was not passed over the veto, but a new bill amending the Mortgage Tax Law was passed and became a law, chapter 532, on the 22d of May. The new law substituted a recording tax for the annual tax imposed by the original statute, which was also amended in other important particulars. See *post*, p. 920, for the Governor's memorandum approving the new bill. For further amendments see the act of 1907, chapter 340.

This abrupt change of policy on the subject of mortgage taxation which has taken place inside of a single year is accounted for not by any change in party politics or party management, but rather by the fact that in the independent judgment of two-thirds of the members voting in each house on the bill the present law should no longer remain on the statute books. Such an expression of policy is entitled to conscientious and serious consideration.

The idea of a fixed annual mortgage tax at a low rate did not originate with the Legislature nor the Executive of last year. In the year 1900 both political parties united in the unanimous report of a joint committee on taxation recommending an annual tax on all mortgage indebtedness, past and future, and, from that time at least, that measure has received cordial support in certain quarters, as it has aroused bitter antagonisms in others.

Approval of the principle of this bill would indicate no more serious reversal of policy on my part than on the part of the Legislature; nor would pride of opinion lead me to a stubborn and unreasonable refusal to reverse my own policy in response to an enlightened public demand.

I refused to sign the original bill of last year until it had been amended so as to provide, for the first year of its operation, a recording tax only, postponing the levying of the annual tax until July 1st, 1906, so that no annual tax has yet been collected under the existing law, nor will be, if it is not continued beyond said date. In my annual message I recommended that this measure be given a fair trial, perfecting it if necessary before interfering with its fundamental principles. Taxation for taxation's sake is not, however, a rule of statecraft, and since the stock transfer tax has been upheld by the Court of Appeals,[s] the State does not seem to be dependent for revenue upon the continuance of the annual mortgage tax. Approval of a re-

[s] See People ex rel. Hatch v. Reardon, (1906) 184 N. Y. 431.

cording tax law will tend to increase the direct tax on real property; but it would seem from the reports of the state tax commissioners that fully seven-eighths of the assessed personal property of the State is found in those counties which are most united in support of the present bill and in opposition to the annual mortgage tax. In the year 1903 the total assessed valuation of personal property in the entire State was $819,203,165. Of this amount, $680,866,092 was assessed in Greater New York alone. In the year 1902 assessed personal property paid in taxes for all purposes, exclusive of highway taxes, about $15,000,000. Of this amount the City of New York paid nearly $12,000,000, and the rest of the State paid less than $3,000,000.

There are, however, objections to the bill herewith returned by me which stand in the way of a final determination whether or not to approve the substitution of a recording tax for the annual tax. While I do not approve the proposition that bills which are defectively drafted should be sent to the Executive for his suggestions, with full knowledge on the part of the Legislature that the same can not be approved by reason of faults in form, and while I am conscious of the fact that disapproval of a bill for technical reasons tends to put the Executive in a false light, as seeking to destroy by indirection some measure of legislation which he hesitates to disapprove on principle, this measure is one of such importance that I have concluded to indicate my technical objections to this bill somewhat in detail.

First. The language of the bill seems to be evasive and ambiguous in stating the nature of the tax. The bill is entitled "An act to amend the Tax Law in relation to the taxation of *debts secured by mortgages,*" but the caption of Section 293 describes the tax as a *recording tax,* while the section itself says that the "tax . . . is imposed on *each mortgage*" (*of real property*). Is the tax a prop-

erty tax or a recording tax? As a recording tax,—a tax upon the act or transaction of placing a mortgage upon record,—it would be sustained by the decision of the Court of Appeals recently handed down in the stock transfer tax case. As a tax on property, it would be inequitable, if not of doubtful constitutionality by reason of arbitrary classification.

Second. The subject of taxation is "mortgages of real property," yet the bill contains no definition of the term "mortgage of real property." It seems reasonably clear that all mortgages that can be recorded as mortgages of real property are subject to the tax, and that no debt secured in part by mortgage on real property is exempt from taxation under the bill; but the present law imposes the tax only upon such proportion of the mortgage indebtedness as the value of the real property bears to the entire value of the mortgage security, and a change in policy in this regard can be read into this bill only by a process of construction. Should the courts interpret the bill so as to permit a corporation to execute a mortgage on its real estate and personal property, and record it without the payment of any tax whatever, the mortgages of such corporations will enjoy an undue advantage which the framers of the bill assure me it is not intended to confer upon them. A clear definition of what is meant by "mortgages of real property" under the bill would remove all ambiguity on this point.

Third. The bill makes no provision for the collection of any tax upon mortgages recorded prior to July 1st, 1906, but upon which no part of the sum secured thereby is advanced until after that date. This omission will permit certain classes of corporate mortgages to escape from payment of any tax whatever. If a corporation places on record on the 30th day of June, 1906, a mortgage for $50,000,000, and nothing is advanced thereon until the next

day, such mortgage would be taxed neither under the annual tax law nor the recording tax bill. To my mind this is a fatal defect in the present bill, but one which can readily be corrected by providing that as amounts are advanced after July 1st, 1906, on mortgages recorded prior to that date, a certificate shall be filed in the office of the county clerk or other recording officer of the county, setting forth the amount so advanced and providing for the payment of the tax thereon.

Fourth. It is to be borne in mind that many mortgages have been and more will be placed on record since July 1st, 1905, upon which under the provisions of Section 295 of the present law no tax is paid at the time of recording for the year ending June 30, 1906, and such tax will not be paid until June 30, 1906. While the saving clause contained in Section 22 of this bill aims to preserve the provisions of Chapter 729 of the Laws of 1905, in relation to the levying and collection of such taxes, I think that such section would be framed with greater accuracy, if it referred also to the date of recording such mortgages as well as to the date when the taxes thereon become due and payable.

Fifth. I seriously question the propriety of the provision for the optional payment of taxes on old mortgages and on bond issues contained in Sections 301 and 302 as amended. It is true the substance of these sections is contained in the existing law, but the change from an annual tax to a recording tax changes the principle which should control in this regard. There is a vast difference between securing exemption from taxation on prior mortgages by paying annually a tax of one-half of one per cent., which may continue for a lifetime, and securing such exemption by paying a single recording tax of one-half of one per cent. When mortgages are exempted from taxation, it should be done with regard to the rights of borrowers to whom the rate of interest has been fixed by the rate of taxation prevailing when their mortgages were given, and lenders' value should not be unwarrantably enhanced by legislative act.

This bill is a long step towards exemption of future mortgages from taxation. Past mortgages may well remain subject to the general tax prevailing when they were executed."

April 20. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the insurance law generally. The bill was amended, passed and became Chapter 326 on the 27th of April.

April 23. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 23, 1906.

"With the calamity that has so recently fallen upon the city of San Francisco and the State of California fresh in our minds, the question is not whether we shall contribute to the relief of the afflicted population of our sister State, but rather how speedily and how liberally may we come to its assistance. Later information serves only to confirm the earlier reports of widespread and appalling disaster, bringing ruin to many hundreds and suffering to many thousands.

The Empire State has never shown itself backward in such emergencies. As the need is great, so should its contribution be generous.

I therefore recommend the immediate appropriation of $250,000 for the relief of the people of California who, as a result of the recent earthquake, are afflicted or distressed in body or estate. I suggest that the said amount be placed at the disposal of the Governor without delay, to be expended by him through the agency of the American National Red Cross or otherwise.[34]

FRANK W. HIGGINS."

[34] Chapter 297, passed April 24, appropriated $250,000 for the relief of the "sufferers from earthquake, fire, pestilence or otherwise in the state of California." The appropriation was to be expended by or under the direction of the Governor through the agency of the American National Red Cross or otherwise.

April 23. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill for the relief of the people of the State of California and making an appropriation. The bill was passed and became Chapter 297 on the 24th of April.

April 23. To the Senate:

Veto of a bill entitled "An act to amend chapter five hundred and seventy of the laws of eighteen hundred and ninety-five, entitled 'An act for the incorporation of associations for the improvement of the breed of horses, and to regulate the same, and to establish a state racing commission,' in relation to the annual tax on gross receipts."

"My objections thereto are as follows:

The present law provides for the division among agricultural fair associations of five per cent. of the gross receipts of the licensed racing associations, in exchange for which the racing associations expect and receive the aid and support of many persons who are interested in agricultural fairs. This results in preventing the enactment of more rigid legislation to enforce the constitutional prohibition of race-track gambling. The amendment proposed by this bill takes for the same purposes a larger share of the gross receipts of running race meetings.

The present law makes gambling on horse races outside of the tracks of licensed racing associations a felony, punishable by imprisonment in State prison for not more than two years, while the same act, if committed on such race grounds, is not a crime at all, but subjects the offender only to repayment of the money he has received on the bets. Race-track gambling, while technically prohibited, is in fact fostered and encouraged and made a monopoly by law. If the present tax were expended for general purposes, the moral sense of the community would scarcely tolerate race-track gambling, but the largess of a quarter of a million

dollars, distributed annually among agricultural fairs throughout the State has created a selfish and unnatural community of interest which is to be deplored.

The toleration by our people of this evasion of the spirit of the constitutional prohibition against gambling[h] is due in large measure to the method of distributing this tax. I feel that the State could better afford to make direct appropriations to support the agricultural societies than to perpetuate race-track gambling by increasing or continuing the revenues derived by the agricultural societies therefrom."

The bill was not passed over the veto.

April 26. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill to provide for the government of cities of the second class.

The bill was passed and became Chapter 473 on the 16th of May.

April 30. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill entitled "An act to legalize the proceedings of the board of trustees of the village of Cobleskill, Schoharie county, New York, in submitting to the voters of said village at its annual election held December, nineteen hundred and five, a proposition to borrow money and issue bonds for the grading, macadamizing, curbing, paving, draining, laying surface water sewers and improving certain streets in the village of Cobleskill and for purchasing machinery as stated in a proposition submitted to and adopted by said electors, and legalizing the vote on said proposition and all proceedings of said board of trustees had thereunder, and to provide for the payment of the principal and interest of said bonds issued or to be issued thereunder."

The bill was passed and became Chapter 347 on the 1st of May.

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[h] Const. 1894, art. 1, § 9.

May 1. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill entitled "An act to amend chapter seven hundred and eighteen of the laws of nineteen hundred and four, entitled 'An act authorizing the selection of lands as a site for the New York state training school for boys, and establishing the said school,' as amended by chapter one hundred and thirty-three of the laws of nineteen hundred and five, in relation to the selection of lands and the time of making report."

The bill was passed and became Chapter 617 on the 24th of May.

May 1. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill increasing the number of justices of the supreme court in the first, second and ninth judicial districts of the State, and to provide additional justices therein."

The bill was passed and became Chapter 693 on the 1st of June.

May 1. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the highway law in relation to highway accounts and reports of highway receipts and expenditures to the state engineer."

The bill was passed and became Chapter 363 on the 10th of May.

May 1. To the Legislature: Certifying to the necessity of the immediate passage of the supply bill.

The bill was passed and became Chapter 686 on the 1st of June.

May 1. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill organizing the senate districts and for the apportionment of the members of assembly of this state. [See new certificate, May 2.]

May 2. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 2, 1906.

"Chapter 123 of the Laws of 1906 provides for the election of directors in domestic mutual life insurance corporations on November 15th, 1906.

Chapter 326 of the Laws of 1906 provides that, at least five months prior to every election of directors in such companies, they shall file with the Superintendent of Insurance two full and correct lists of the names and last-known post-office addresses of all policy-holders entitled to vote, said names to be arranged alphabetically and classified by states, territories and possessions of the United States and foreign countries. The law also requires every such corporation to maintain two similar lists at its home office and at its general agencies in every state, territory and possession of the United States and in foreign countries.

I am informed that it is practically impossible for the larger companies to complete these lists so that they may be filed on the 15th of June, 1906, as required by the law; and, to avoid confusion, I recommend that Chapter 123 of the Laws of 1906 be amended by changing the date of election of directors to December 18th, 1906, so as to give the companies ample time to comply with the law relative to the filing of lists of policy-holders as above set forth.[35]

FRANK W. HIGGINS."

May 2. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending the penal code in relation to crimes against the elective franchise.

The bill was passed and became Chapter 503 on the 19th of May.

[35] The Governor's suggestion as to the election of directors in domestic mutual life insurance companies was embodied in chapter 354, passed May 4, amending the act of 1906, chapter 123, on the same subject, by providing that such elections in that year should be held on the 18th of December.

May 2. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill entitled "An act to establish a new state prison in the eastern part of the State to take the place of Sing Sing prison; to authorize the governor to appoint a commission to select a site and construct such new prison and making an appropriation therefor."

The bill was amended, passed and became Chapter 670 on the 31st of May.

May 2. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending chapter 123 of the laws of 1906, providing for the election of directors in mutual life insurance corporations, relative to the date of election of directors. [See new certificate of May 3.]

May 2. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill amending the primary election law in relation to cities of the second class.

The bill was passed and became Chapter 466 on the 16th of May.

May 2. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill making an appropriation for the payment for the fiscal year beginning on the 1st of October, 1905, of interest on the canal debt contracted or to be contracted under article seven, section four of the constitution, and as provided by chapter three hundred and two of the laws of 1906.

The bill was passed and became Chapter 460 on the 15th of May.

May 2. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill making an

appropriation for the payment of interest on the debt for highway improvement contracted or to be contracted under article seven, section twelve of the constitution and as provided by law for the fiscal years beginning on the 1st day of October, 1905, and on the 1st day of October, 1906.

The bill was passed and became Chapter 471 on the 16th of May.

May 2. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill making an appropriation for the payment for the fiscal year beginning on the first day of October, nineteen hundred and six, of interest on the canal debt contracted or to be contracted under article seven, section four of the constitution.

The bill was passed and became Chapter 533 on the 22d of May.

May 2. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill to organize the senate districts and for the apportionment of the members of assembly of this State. Second certificate.

The bill was passed and became Chapter 431 on the 14th of May. [See note 16, *ante,* p. 852.]

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill to provide ways and means for the annual contribution to the highway improvement fund.

The bill was passed and became Chapter 470 on the 16th of May.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill to provide ways and means for the annual contribution to the canal debt sinking fund.

The bill was passed and became Chapter 461 on the 15th of May.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of an Assembly bill authorizing the commissioners of the land office to grant and convey to the city of Albany lands under water of the Albany basin.

The bill was passed and became Chapter 648 on the 25th of May.

May 3. To the Legislature: Certifying to the necessity of the immediate passage of a Senate bill amending chapter 123 of the laws of 1906, providing for the election of directors in mutual life insurance corporations, relative to the date of election of directors. Second certificate.

The bill was passed and became Chapter 354 on the 4th of May. [See special message, *ante,* p. 894.]

May 3. To the Senate: Transmitting the report of the Lewis and Clark Exposition Commission.

May 3. The Legislature adjourned without day.

MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 26.

Memorandum filed with Assembly bill, Chap. 109, terminating the use of streets in New York by steam railroads. Approved.

"The immediate purpose of this bill is to require the New York Central railroad to remove its tracks from the surface of Eleventh avenue in said city, and so to terminate the present use of said avenue by said railroad, which is now operated by steam locomotive power at grade. No one contends that the company should continue indefinitely to enjoy its present privileges, which are admitted to be a menace to public safety. It is desirable to move at once in the right direction towards the accomplishment of a plain duty, if the bill is not fatally defective.

The bill is objected to on constitutional and engineering

grounds. It is said that it is a local act which embraces more than one subject, and that it therefore contravenes the provisions of the Constitution that 'no local bill shall embrace more than one subject, and that shall be expressed in the title.' (Constitution, Art. III, Section 16.) If, however, the provisions relating to the collateral subject are not in any way connected with or dependent upon the main subject, and may be stricken out, leaving the residue of the act complete and sensible and capable of being executed, the act, with the void provisions eliminated, is valid. The objection, if any, which exists on this ground is not fatal to the main purpose of the bill.

The bill provides for proper compensation and due process of law, and while it imposes a heavy burden upon the railroad company by compelling it to construct a subway or leave the avenue entirely, it must be remembered that said company has, for many years past, enjoyed the use of a principal thoroughfare of the city of New York for its railroad tracks, in derogation of the rights of the public and in a manner necessarily interfering with the legitimate use of the avenue as a highway, and fraught with danger to life and limb. Railroad companies obtaining such privileges do so at the risk of losing them after years of enjoyment, when conditions as to population change, and that which was perhaps excusable in the first instance, becomes an intolerable abuse. In measuring the equities of the present it is well to consider the special advantages enjoyed in the past.

I am not seriously concerned with the engineering problems presented in the plan for a proposed subway. If such plan is impracticable, by reason of expense or other conditions, the company is not required to undertake impossibilities, but it may take its tracks entirely out of the avenue, if it elects to do so, in which case it will receive compensation for all lawfully existing privileges which are thereby taken from it."

April 2.

Memorandum filed with Senate bill, Chap. 123, providing for the election of directors in mutual life insurance corporations.[36] Approved.

"This bill provides that the terms of office of directors of mutual life insurance corporations organized under the laws of this state shall expire on November 15, 1906, and that their successors shall then be elected and that 'no votes shall be cast at any such election under any proxy executed prior to September 15, 1906.'

The bill is a useful one. It takes the control of certain companies from the present boards of directors, members of which have been discredited by the poor account given of their stewardship to the investigating committee. Some were careless, some selfish, and few proved so loyal to the interests of policy-holders as to justify their being continued in office, except by the exercise of the enlightened franchises of such policy-holders.

On the other hand, the policy-holders must now act with calmness and intelligence lest their last condition be worse than their first; lest under the new regime an anxious and hungry horde of adventurers, of self-guaranteed integrity, obtain, by loud assurances of good will, the misplaced confidence of those who blindly seek refuge from existing ills. The bill provides that no proxy executed prior to September 15, 1906, shall be valid. Each policy-holder affected by this act should think carefully and inquire cautiously into the motives of those who solicit his vote, before giving his proxy. Organization is inevitable, but the control of the companies should pass to wise and conservative financiers, and not to energetic and plausible promoters."

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[36] For a message recommending an amendment to this act see *ante*, p. 894, and note 35.

April 3.

Memorandum filed with Assembly bill, Chap. 125, fixing the price of gas in New York city. Approved.

"This bill is commonly known as the eighty-cent gas bill, as, subject to certain exceptions, it fixes the price for gas in New York City at 80 cents per one thousand cubic feet.

The corporate interests affected by this legislation contend that inasmuch as the Legislature of 1905 created a gas commission with power to regulate the price of gas after investigation, it is inconsistent now to fix such price by law. A brief reference to the history of gas legislation refutes this plea. The joint committee of the Senate and Assembly was appointed to investigate the lighting question only so far as concerned the city of New York. After taking much testimony on cost of production, value of plant, and possible income of the gas companies, the committee reported a number of bills, including an eighty-cent gas bill for New York City, and also a State gas commission bill, the latter for the purpose of dealing with the question generally, with special reference to other municipalities where no legislative investigation had been had to guide the action of the Legislature. Its findings sustain this bill and justify the conclusion that present rates are excessive. Had all its bills become law, no action by the gas commission would have been necessary for New York City, and no such action was originally contemplated. The Legislature is now but carrying into effect the original recommendations of its committee. The eighty-cent bill, having been defeated last winter, it became necessary to resort to the commission in order to obtain the desired relief which the committee sought to give forthwith. But the Consolidated Gas Company not only questions the constitutional power of the Legislature to delegate to a commission the authority to regulate rates, but challenges in

the courts the fairness of the eighty-cent rate already established by the state commission for the Borough of Manhattan. It is therefore entirely consistent and proper for the Legislature to deal with the matter directly and as effectively as possible, rather than to abandon the original scheme of legislation recommended by the committee.

Distrust of democratic institutions prevails where the self-interest of the few is potent and the self-interest of the many is powerless; where wealth rather than manhood determines who shall enjoy the choicest privileges in the community, and where public service corporations flourish while consumers suffer. Distrust of democracy likewise prevails where wealth is constantly threatened with confiscation by unjust and unequal laws. The hope of democracy lies not wholly in municipal ownership where,— the fair incentive of personal gain being withdrawn,— public utilities may perhaps be operated in a shiftless manner, and at a loss, so that taxation of property must be resorted to in order that such utilities may be enjoyed at less than cost. It lies rather in the careful restriction of companies to a fair return on the value of their investment. Confiscation, if permitted by political expediency which looks no farther than the next campaign for the rule of right to govern its action, is prohibited by the constitutions of state and nation.

When one devotes his property to a public use, he grants the public an interest in that use and must submit to be controlled by the public for the common good. The State has the power to make reasonable regulation of the charges for services rendered by corporations engaged in the business of manufacturing and selling illuminating gas. To what extent may this regulation go? The authorities must fix upon a price which is reasonable. The power to regulate is not a power to destroy. The property of a corporation cannot be wrested from it for the benefit of the public. Its stockholders should receive some compensation

for the use of the money they have invested. Yet the courts have held that judicial interference should not occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulation as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.

All laws regulating rates are subject to judicial review. Judicial inquiry may best determine where regulation ends and confiscation begins, but the power and the duty of the Legislature in this case seem clear, and the example of prompt and vigorous action should be a restraint on extortion and greed, and welcome evidence of the loyalty of public servants to the interests of the people." *

April 10.

Memorandum filed with Assembly bill, Chap. 183, providing for an inspection of hotels which traffic in liquors. Approved.

" The purposes of this bill are two-fold.

First, to compel an inspection of hotel buildings in connection with which the traffic in liquors is to be carried on, before any hotel liquor tax certificate is issued. In the City of New York the superintendent of buildings of the borough in which such premises shall be situate, in other cities the mayor of such city and in incorporated villages the president of such village are charged with the duty of inspection, and are required to file a sworn statement that such declared hotel building complies with the provisions of section thirty-one of the liquor tax law relating to hotels and hotel-keepers; in other words, that such hotel is a *bona fide* hotel for the accommodation of guests, and not a sham or fake 'hotel,' so styled only for the purpose of obtaining the advantages of a hotel liquor tax certificate,

* For a construction of this act, sustaining it as to the price of gas, but rejecting provisions as to pressure and penalties, see Wilcox et al. v. Consol. Gas Co. (1909), 212 U. S. 19.

and not intended to accommodate the traveling public with rooms and food. If such declared hotel building does not comply with the provisions of the law relating to hotels and hotel-keepers, no liquor tax certificate shall be issued to any person proposing to carry on the traffic in liquor at such place, and the police authorities shall be notified that a liquor tax certificate has been denied.

Secondly, the bill provides that any taxpayer of a city or incorporated village who has reason to believe that any hotel building situate therein for which a liquor tax certificate has been issued, does not comply with the provisions of the law relating to hotels and hotel-keepers, may file a statement to that effect with the state commissioner of excise, who must thereupon cause an inspection of the hotel building to be made and file a statement in detail in his office. If it appears from said statement that said building does not comply with the provisions of the law relating to hotels and hotel-keepers, the said commissioner shall forthwith commence proceedings to revoke and cancel the liquor tax certificate issued for the said hotel building, unless, in accordance with his demand, such certificate shall be immediately surrendered.

I believe this bill will, in a large measure, eliminate some flagrant abuses which have grown up under the present law. While the fake 'hotel' is and has always been without any legal sanction under the present liquor tax law, and while the keeping of such 'hotels' is and has been punishable with severe penalties, the local authorities charged with the duty of enforcing the police laws regulating the liquor traffic have not always had the disposition to prosecute violations as rigorously as might be. The preliminary detailed inspection of hotel buildings made mandatory by this act, and the provisions for the institution of proceedings to cancel or revoke liquor tax certificates will render it easier to enforce and more difficult to evade the law."

April 26.

Memorandum filed with Assembly bill, Chap. 321, relative to services in legislative matters. Approved.

" This bill compels every person employed as counsel or agent to promote or oppose the passage of bills in either house, to file in the office of the Secretary of State a notice giving the names of his clients, together with a description of the legislation in reference to which he is employed. It prohibits employment of such counsel or agent for a contingent fee. It prohibits any person from being employed to promote or oppose legislation whose appearance is not entered in accordance with the provisions of this act. Two months after the adjournment of the Legislature all persons and corporations employing legislative counsel or agents must file in the office of the Secretary of State a verified itemized statement, showing all expenses incurred in connection with legislation pending at the last previous session. Violation of the section is a misdemeanor, and civil penalties are also provided for.

This bill aims to insure publicity as to the relation of attorney and client and principal and agent existing in connection with legislative matters, and thereby to prevent secret lobbying and the use of so-called ' yellow-dog ' funds and I approve it for the reason that it is a measure of importance to remedy a real evil.

Future legislation will doubtless improve in some respects its provisions. The Massachusetts act allows a person to enter himself upon the docket as legislative counsel exclusively, and prohibits a person whose name is so entered from rendering service otherwise than by appearing before a committee and by doing work properly incident thereto, or by giving legal advice as regular legal counsel of corporations or associations. The Massachusetts statute further provides for a separate docket of legislative agents, who may, by all other lawful methods than the above, promote or oppose legislation.

It would seem that lawyers of high repute might draw a distinction between the work of the legislative counsel and the work of the legislative agent, and might decline to register their appearance under this bill, which does not distinguish between the two classes of employment, but authorizes the agent to appear before committees and the counsel to engage in personal solicitation of individual members of the Legislature.

The bill contains no provision for the disbarment of legislative counsel or agents for improper practices, and, in my judgment, the bill would be strengthened if such a provision were added thereto."

April 27.

Memorandum filed with Senate bill, Chap. 324, amending the penal code relative to the crime of perjury. Approved.

"The bill establishes a rule of evidence whereby, in perjury cases, the falsity of the sworn statement set forth in the indictment is presumptively established by proof of contradictory statements by the defendant under oath. This presumption is a mere rule of inference which takes the place of evidence when no contradictory evidence is offered; a mere shifting to the defendant of the burden of producing evidence on one feature of the case.

Of two contradictory material statements one must be false. This bill helps out the indictment and weakens the silent defense that the false statement may be the one made elsewhere and not the one charged in the indictment, but the State must still establish beyond a reasonable doubt that the defendant acted with criminal intent and willfully and knowingly testified falsely in a material matter, or stated under oath material matter to be true which he knew to be false, or which he did not know to be true. A conviction would not be possible merely upon proof that the defendant had made prior contradictory statements under oath.

This measure should be an incentive to care on the part of officers of corporations in making sworn reports, but it in no sense tends to make criminal acts out of innocent mistakes.

The plainer the lesson of the State that the false oath is a serious offense and not a venial fault, condoned by custom, the higher the standards of business morality should become."

April 27.

Memorandum filed with Senate bill, Chap. 326, amending the insurance law generally. Approved.

" This bill is the last of the bills introduced by the Armstrong Committee, as the result of its investigation, for the purpose of remedying existing evils and of establishing more securely the business of life insurance in this State. That in the judgment of the Committee so much remedial legislation and such comprehensive and far-reaching amendments are necessary, indicates with sufficient clearness the inadequacy of the old insurance law.

It is impossible within the limits of this memorandum to outline fully what is accomplished by this comprehensive measure.

It deals with the organization of life insurance companies; the rights of policy-holders in the election of directors; the retirement of stock; investments, including syndicate participations; a limitation of new business; limitation of expenses; valuation of policies; rebates; surrender values; ascertainment and distribution of surplus; right of policy-holders to resort to the courts; forms of policy; State supervision, and penalties.

During the extraordinary session of last July, I recommended to the consideration of the Legislature the question of the appointment of a joint committee to investigate the operations of life insurance companies doing business in

the State, for the purpose of preparing and reporting 'such proposed legislation as may be adequate and proper to restore public confidence and to compel life insurance companies to conduct a safe, honest and open business for the benefit of their policy-holders.' No other legislative investigating committee in the history of the State has been invested with greater responsibilities, has performed its duties with more intelligence and energy, has commanded in a greater degree the public confidence, or has succeeded in placing upon the statute books more valuable remedial legislation. No blot of failure or weakness mars its completed work. The legislative session of 1906 will go down in history as the year of great insurance reforms."

THIRTY DAY BILLS.

May 15.

Veto of Senate bill entitled "An act in relation to illuminating gas in the city of Auburn and regulating the quality and pressure thereof and the price to consumers and providing a penalty for violation." Also an Assembly bill entitled "An act to regulate the price of illuminating gas in the villages of Seneca Falls and Waterloo, Seneca county, New York."

"These bills arbitrarily fix the price of illuminating gas in the city of Auburn and the villages of Seneca Falls and Waterloo at $1.00 per thousand cubic feet.

The Legislature has the power to establish rates to be charged by public service corporations, including gas companies, provided that such rates are reasonable. The question of reasonableness is subject to judicial review, and should not be determined without careful investigation as to the cost of the service rendered and the profits derived from such service. Confiscatory legislation is but the prolific mother of law suits.

The stockholders in these corporations, as well as the consumers of gas, are entitled to the protection of just and equal laws.

The Legislature has established a commission of gas and electricity (Ch. 737, L. 1905), having ample powers to regulate the price of gas upon notice to the corporation affected and a hearing.[37] If the corporations affected by these bills are charging excessive rates, the local authorities, or the purchasers of gas, may readily institute a regular and orderly proceeding for a determination, upon evidence, of the reasonable maximum price that may be charged.

The price of gas in New York City was fixed by law as the result of a thorough legislative investigation. Dollar gas may be justified by conditions prevailing in Auburn, Seneca Falls and Waterloo, but the approval of these bills on my part would be mere haphazard speculation as to what is fair and reasonable."

May 15.

Veto of an Assembly bill entitled "An act to enable the city of Schenectady to withhold the sum of three thousand dollars heretofore appropriated for the celebration of Fourth of July next and to expend the same for the relief of the sufferers in San Francisco."

"The purpose of this bill is to authorize the city of Schenectady to donate $3,000 of city moneys for the benefit of the sufferers from the San Francisco earthquake. I cordially approve the generous spirit that prompted this liberal action on the part of the city authorities, but I am unable to approve the bill on constitutional grounds.

Article VIII, Section 10 of the Constitution provides that 'no county, city, town or village shall hereafter give any money * * * to or in aid of any individual, association or corporation.' Authority to apply public moneys for educational and charitable purposes is given in other sections of the Constitution, but none are broad enough to include the purpose of this bill. The constitutional lim-

[37] See *ante*, p. 855, note 19, for a reference to a statute creating public service commissions and repealing the Gas Commission Act of 1905.

itations upon the power of the Legislature to give the money of the State in aid of individuals, are not so narrow and do not seem to prohibit a grant of state funds for the relief of the earthquake sufferers, but the Court of Appeals has repeatedly condemned, as unconstitutional, laws which attempted to grant city moneys to or in aid of individuals.'' *

May 16.

Memorandum filed with Senate bill, Chap. 468, entitled "An act to amend chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, entitled 'An act to provide for the improvement of the public highways,' generally," and with Senate bill, Chap. 470, entitled "An act to provide for issuing of bonds of the state for the improvement of highways, and making an appropriation therefor." Approved.

'' These bills were prepared and introduced by the Joint Senate and Assembly Highways Committee, for the purpose of carrying into effect the constitutional amendment adopted by popular vote last fall, authorizing the creation of a debt of $50,000,000 for highway improvements under the so-called Good Roads system established by the Armstrong-Higbee Act of 1898.[i]

I have approved these bills because of the general public interest and desire that the vast improvement contemplated thereunder be put in operation as speedily as possible.

The bills are in some respects defective, and should be corrected hereafter. Section 7 of bill No. 1413[j] provides that ' section two of section eight of said chapter is hereby repealed.' There is no section 2 of section 8 of said chapter, and the reference is obviously to section 2 of chapter 4 of the laws of 1903. In bill No. 1414[k] the provisions of the Constitution relative to a sinking fund for class B bonds

* See Bush v. Orange County (1899), 159 N Y. 212 (drafted men); People ex rel. Rodgers v. Coler (1901), 166 N. Y. 1 (rate of wages).

[i] Const. 1894, art. 7, § 12; Am. 1905.

[j] Chapter 468.

[k] Chapter 470.

appear not to have been strictly followed. I am informed that it will be unnecessary to issue bonds of this class during the present year, and the next Legislature will doubtless correct this defect."

May 19.

Memorandum filed with Senate bill, Chap. 494, entitled "An act to amend chapter eighty-seven of the laws of eighteen hundred and ninety-three, entitled 'An act to amend chapter three hundred and thirty-five of the laws of eighteen hundred and sixty-eight, entitled 'An act to incorporate the city of Ogdensburg' and the acts amending the same,' generally," and with Senate bill, Chap. 495 entitled "An act to amend chapter four hundred and fifty-four of the laws of eighteen hundred and ninety-three, entitled 'An act to provide for the election of school commissioners of the city of Ogdensburg, and their term of office,' in relation to school commissioners and elections." Approved.

"The main purpose of these bills is to change the Ogdensburg city election from the second Wednesday in May to the general election day in the fall of the year.

Both bills were returned more than 15 days after they had been transmitted to the mayor, having been transmitted to the mayor on April 10th, 1906, and returned on April 26th, 1906; so that they were not accepted by the city within the period fixed by the statute.

Each bill has attached to it a certificate of the mayor to the effect that the bill was not accepted by the city, but there is no certificate as to the action of the common council thereon. The certificate is not in the form provided by law for cities of the third class, and it does not appear that any action was taken by the common council thereon, although it does appear that a public hearing was had before the common council.[38]

[38] Both bills were repassed by the Legislature after their return not accepted by the city.

The main features of the charter amendment bill have to do with the shifting of the election from spring to fall, and the regulating of terms of office in accordance therewith.

The bill provides for the election of aldermen by wards. The present charter provides for the election of aldermen on a general city ticket. In the fall of 1906 there shall be elected a mayor and recorder, for terms commencing on June 1st, 1907, and expiring on the 31st day of December, 1908. The terms of the present mayor and recorder are not curtailed by this act. Four of the eight aldermen will have their terms cut in two; that is, one-half the aldermen who were elected for four years will serve only two years. In addition to this, the terms of all the appointive officials are adjusted to conform to the general provisions of the bill.

One objection made to the charter bill is that the municipal election is held with the general election in the even-numbered years. The Constitution provides that municipal elections in cities of the first and second class shall be held in the odd-numbered years,[1] but there is no such prohibition as to elections in third class cities; and the municipal elections, in a considerable number of cities of the third class, are now held at the fall election in the even-numbered years, for the convenience of the voters and for the sake of economy.

The change in the method of electing aldermen restores the ward system, which has the sanction of general custom. No sanctity, however, attaches to the ward system. Uniformity in charters of cities of the third class is not to be found and seems impracticable. Large villages elect trustees on a general ticket; small cities elect aldermen by wards. An alderman in Greater New York represents a constituency numbering on the average upwards of fifty thousand. As there is no rule of consistency here, no in-

[1] Const. 1894, art. 12, § 3.

consistency can arise from my approval of the ward system for one city and the general ticket system for another.

The present school law of Ogdensburg provides for the election of three school commissioners annually, to hold office for the term of six years. There are nine school commissioners in said city. The terms of the school commissioners now in office end as follows: Three in 1907, three in 1909, three in 1911.

This bill provides that there shall be no election of school commissioners in May, 1907, but that at the general election in the year 1906 there shall be elected nine commissioners,—three for terms beginning June 1st, 1907, and expiring December 31st, 1908; three for terms beginning June 1st, 1907, and expiring December 31st, 1910, and three for terms beginning June 1st, 1907, and expiring December 31st, 1912. The successors to such commissioners to be elected biennially for terms of six years from the first day of January next following their election. The terms of office of all the school commissioners now in office expire, by the terms of the bill, on May 31st, 1907. Provision is made in the old law, and preserved in the amendment, for a nonpartisan school caucus for the purpose of nominating school commissioners.

Communications are on file favorable to the bill from A. R. Herriman, President of the Board of Education; John T. Watt and John E. Briggs, members of said board. A communication is on file from Frank Chapman, Chairman of a Committee of said board, in opposition to the bill. From the letter of Mr. Herriman, it would appear that the committee consisted of himself and Messrs. Chapman and Kelly, and that Mr. Herriman refused to concur in the report of the committee. It is stated that the report of the committee was adopted at a meeting of the Board of Education, with a view to securing an amendment to the bill at this session which would not terminate the terms of office of all the present commissioners on May 31, 1907.

The only serious objection, from a legal or constitutional point of view, to these two bills is that the entire Board of Education is legislated out of office, whereas, by a curtailment of their term of office, so that the same would expire on the 31st of December preceding the 31st of May in the years their terms now expire, instead of on the latter date, the present board would remain in office for substantially the full terms for which the members thereof were elected. Aside from this, there is nothing unusual about the bills. As a measure of economy, cities of the third class are generally doing away with the spring election, and providing for the election of city officers at the general election in the fall of even-numbered years.

Nothing in either of the bills takes from the people of Ogdensburg the right to choose their elective officers. When terms of office are curtailed, the individuals who are affected thereby are naturally inclined to look with disfavor upon the proposition, and it is therefore not unusual to have the mayor or the common council, or both, recorded in opposition to bills of this kind, when local sentiment generally favors the same; but it must be recalled that the Constitution absolutely prohibits the Legislature from extending the terms of city officers,[m] and it is generally found necessary to curtail the terms of some officers in order to accomplish the purpose of changing the date of city elections from spring to fall.

It would be preferable to shorten the terms of the present elective and appointive officers by as brief a period as practicable in making the change from spring to fall elections, but it is now too late to amend the bills, and I have concluded to approve them rather than to defeat their main purpose entirely."

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[m] Const. 1894, art. 10, § 2. See People ex rel. Fowler v. Bull, (1871) 46 N. Y. 57; People ex rel. Williamson v. McKinney, (1873) 52 N. Y. 374; People ex rel. Leroy v. Foley, (1896) 148 N. Y. 677.

May 19.

Memorandum filed with Senate bill, Chap. 506, relative to the hours of labor and the prevailing rate of wages. Approved.

"The Labor Law is Chapter 415 of the Laws of 1897 and is a compilation of prior acts of the Legislature. Chapter 856 of the Laws of 1867 fixed eight hours of labor as a legal day's work on public work, and since 1870 it has been the law that eight hours shall constitute a legal day's work for all classes of employees except those engaged in farm and domestic service.

The section hereby re-enacted (section 3) was amended in 1899 (Chapter 567) and in 1900 (Chapter 298), and has been a part of the laws of the State in its present form since April 3, 1900, except that the present bill provides that nothing therein shall be construed to apply 'to the construction, maintenance and repair of highways outside the limits of cities and villages.'

The penal and criminal provisions of the law, and the provisions affecting wages, do not apply to laborers in private employments, such as clerks in retail and wholesale stores, mercantile establishments and the like. A penal statute fixing the hours of labor of adult male persons employed in private work, not of a dangerous or unwholesome nature, or establishing a rate of wages to be paid for private work, would doubtless be held unconstitutional, as an arbitrary interference with freedom of contract; but this is a question of large import, which I have no occasion to determine or even to consider, for this bill imposes no penalties for violation of its provisions except in case of public employees or employees on public works. This re-enactment of the former law meets a decision of the Court of Appeals adverse to the constitutionality of so much thereof as applied to employees of municipal contractors.

The following brief history of this section in the courts of the State will indicate the purpose and legal effect of this amendment:

The Court of Appeals held, in 1894, that the Legislature has power to pass a general law regulating the compensation of laborers employed by the State, or by officers under its authority (Clark *v.* State, 142 N. Y., 101); and the same court held in 1904, that the provision of the Labor Law as to prevailing rate of wages, so far as it relates to State or municipal employees, was constitutional (Ryan *v.* City of New York, 177 N. Y. 271).

The Court of Appeals in 1903, in the case of the People *v.* The Orange County Road Construction Co., 175 N. Y. 84, by a divided court, upheld the right of the State, when the State itself prosecutes a work, to dictate every detail of the service required in its performance, prescribe the wages of workmen, their hours of labor, and the particular individuals who may be employed, but denied that such right exists where it has let out the performance of the work to the contractor.

In 1901 the Court of Appeals held, in the case of People ex rel. Rodgers *v.* Coler, Comptroller, 166 N. Y. 1, that a municipal contractor who has fully performed his contract might compel the city to pay the amount due by mandamus, although he had failed to comply with his stipulation to pay the prevailing rate of wages; and that if he failed to pay such rate the contract should be void, since the Labor Law, so far as it relates to such a case, was unconstitutional.

Subsequent to the decision of this case, the Supreme Court of the United States, in Atkin *v.* State of Kansas, 191 U. S. 207, upheld a similar statute prescribing an eight-hour day and the prevailing rate of wages for employees of municipal contractors. Atkin, a municipal contractor, was prosecuted criminally, convicted and punished under this statute. This case might be deemed to be controlling,

were it not that thereafter the Court of Appeals of this State, in the case of People ex rel Cossey v. Grout, Comptroller, 179 N. Y. 417, again by a divided court held that the Atkin case did not control the decision in the Rodgers case, so far as that case held that the Labor Law was an unconstitutional violation of the city's rights and powers.

Last year the people of the State determined that if the Legislature lacked the power to enact such laws in behalf of labor's hours and wages on public works as were deemed wise and salutary, the fundamental law should be so changed as to grant such powers in unmistakable language and by an overwhelming popular vote the Constitution was amended by adding a new section to read as follows:

'The Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, or by any contractor, or subcontractor performing work, labor or services for the State or for any county, city, town, village or other civil division thereof.' (Art. XII, section 1, end of section.)

Under the authority of this section, the power of the Legislature to enact labor laws is extended to cover the case of employees of municipal contractors, to authorize the Legislature to fix for such employees an eight-hour day, to establish the prevailing rate of wages as their compensation, and to punish violations thereof. The reenactment of section 3 by this bill re-enacts the legislative will as heretofore expressed and vitalizes so much of the section as the courts had heretofore held inoperative."

May 21.

Veto of an Assembly bill entitled "An act to amend section thirty-two hundred and thirty of the code of civil procedure, relating to costs in an action."

"This bill differs from Senate bill No. 703, vetoed by

me, in that it limits the costs in a stockholder's action to ten per centum of the amount restored to the corporation or recovered but, like the former, it provides that the expenses incurred by the plaintiff may be allowed without limitation as to amount and without reference to the sum recovered.[39]

I would have approved a bill which permitted the court in these cases to make an additional extra allowance, based on the amount recovered, to cover plaintiff's expenses where the corporation is substantially benefited by plaintiff's activities, being itself at fault through the negligence or wrongful acts of its board of directors, but I cannot approve the policy of encouraging stockholders' litigation at the expense of the corporation where, in the event of plaintiff's success, the amount restored to the corporation would be negligible."

May 21.

Veto of an Assembly bill entitled "An act to amend the penal code, relating to sentences to imprisonment in the New York state reformatory at Elmira."

"The present law provides that the term of imprisonment of a person sentenced to imprisonment in the New York State reformatory at Elmira, shall not exceed the maximum term provided by law for the crime for which the prisoner was convicted and sentenced. This bill provides that whoever is so sentenced to imprisonment in the reformatory may be held therein for a term not exceeding five years, notwithstanding the maximum term of imprisonment for his crime that may be by law otherwise provided. This would shorten the period of possible detention for many prisoners, and seriously impair the application of the principle of the indeterminate sentence. It would also increase the possible maximum term of prisoners con-

[39] For veto, see *ante*, p. 880.

victed of crimes where the maximum term of imprisonment is now less than five years.

The theory of the indeterminate sentence is that the prisoner should be restrained of liberty until he may be safely permitted to assume the responsibilities of citizenship outside the prison walls. The unreformed and unrepentant criminal would, under a literal application of this theory, be restrained for a long period of time, while the youth who was amenable to prison discipline and reformatory influences, might properly be released after a comparatively short period of detention. In this State it has been felt unjust to permit any person convicted of crime to be restrained for a longer period than the maximum term for which he might be sentenced to State prison, and to that extent the indeterminate sentence theory has been modified by the law governing the Elmira reformatory. There are in the reformatory at the present time eleven prisoners convicted of manslaughter, each of whom might have been sentenced to State prison for a term of fifteen years. It does not seem wise to fix the maximum term of detention in the reformatory at so low a period as five years, as the result would be either to deter the courts from sentencing prisoners to the reformatory in cases where the maximum term is greater than five years, or to compel the discharge of such persons so sentenced to the reformatory at the expiration of one-third of the present maximum term of imprisonment. On the other hand, it would seem to work hardship to permit the detention of a person convicted of crime for which the maximum sentence is less than five years, for a longer period than that for which he might be sentenced to State prison."

May 21.

Veto of an Assembly bill entitled "An act to regulate and control and to limit the use of the waters of Niagara river."

"I recommended to the Legislature that a limit be placed upon the amount of water which may be taken from Niag-

ara river by existing active power companies. To my mind this implied legislation fixing the maximum number of cubic feet per second that might lawfully be drawn from the river by such companies.

This bill provides that the rights of existing corporations shall be limited and restricted to take from the river 'a quantity of water equal to the quantity which said corporations can by virtue of their present rights draw under their present charters.' This provision either is meaningless as being only declaratory of present law or else it doubles the quantity of water which such corporations may lawfully use. The legislative intent doubtless was to help save Niagara, but the expression of such intent by this bill is not felicitous. Approval thereof on my part would under no conditions place the slightest restriction upon the power companies or upon future Legislatures, and it might have a diametrically opposite result from that intended."

May 22.

Veto of an Assembly bill entitled "An act to enable the adjutant-general to permit the use during old home week in the county of Oswego of certain battle flags in his custody."

"This bill authorizes the Adjutant-General to permit the use, in the military parade during the celebration of Old Home Week in Oswego county, of the battle flags of the local regiments and batteries that were carried by them in the War of the Rebellion. These flags are now carefully preserved in the State Capitol, and many of them are so fragile that use and exposure might result in their total destruction. Such priceless relics of patriotism and courage should not be subjected to the risk of loss or injury. Doubtless this single permit would not be abused, but it would establish a bad precedent, and it is better to withhold approval now than to make discriminations hereafter."

May 22.

Memorandum filed with Senate bill, Chapter 532, in relation to the taxation of mortgages of real property.[40] Approved.

"This bill substitutes a single recording tax of one-half of one per cent. on mortgages for the annual tax of one-half of one per cent., which superseded the general property tax on mortgages imposed prior to July 1, 1905. One-half of the proceeds of the tax goes to the State and one-half to the local subdivisions of the State.

Mortgages are property and, like other property, should be taxed for the support of the government, general and local. But as taxes on land are shifted to the tenant, taxes on articles of merchandise to the consumer, and taxes on transfers of property to the transferee, so the shifting and incidence of taxation, by a law as inexorable as the law of nature, throw upon the borrower the tax on mortgages. A reduction of the taxes on mortgages should reduce the rate of interest on mortgage loans. The annual tax on mortgages imposed by the Act of 1905, reduced the tax on such mortgages as previously had been taxed. But it has been estimated that more than 80 per cent. of all mortgages were either exempt by law from the general property tax or else successfully evaded taxation; therefore, in the brief year of trial and experiment the annual mortgage tax, which reached all mortgages, has, through the working of that instinct of self-preservation which controls the business transactions of capital, resulted in raising the rate of interest by an amount equal to the annual tax.

I am still of the opinion that, with a fixed low rate of mortgage taxation, the law of supply and demand, competition among money lenders, and exemption from the risk of general taxation would ultimately bring the rate of interest on mortgages down to one-half of one per cent. in

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[40] For veto of another bill on this subject, see *ante*, p. 885.

excess of the rate of interest on non-taxable securities, and would thereby result in a real benefit to the borrower.

The recording tax is an improvement on the unfair, unequal and indefensible general property tax on mortgages. It has the support of two-thirds of the members of both houses of the Legislature, who should know and reflect the views of their constituencies.

It does not devolve upon the Executive to thwart the people's will as the same has been deliberately, emphatically and repeatedly expressed by the law-making department of government. The veto power should be exercised on important and well-considered matters with the greatest caution and for the most substantial reasons.

The present bill is not free from technical defects. My objections to the former bill, as indicated in my veto message, have been met in the letter rather than in the spirit. It is, however, needless for me to pick flaws in the text. I approve the bill, if for no other reason, for the satisfactory one that the Constitution sets the deliberate and twice-expressed judgment of two-thirds of the members elected to each house, above the judgment of the Executive. It matters little that technically this bill was not passed over my veto and that it is now in my power to dispose of it by a pocket veto. To all intents it was so passed over my veto when this bill was repassed in its present form, and I have no desire to defeat the bill by availing myself of strategetic advantages. I have had before me no other bill on which apparent public opinion has been so emphatically and insistently expressed as on this measure. The Governor should represent the whole people and not the special advocates of particular measures of taxation. I feel that for me to withhold my approval of this bill at this time and under existing conditions, would be indefensible."

May 22.

Memorandum filed with Assembly bill, Chap. 533, entitled "An act making an appropriation for the payment for the fiscal year, beginning on the first day of October, nineteen hundred and six, of interest on the canal debt contracted or to be contracted under article seven, section four of the constitution."

Also, Assembly bill, Chap. 460, entitled "An act making an appropriation for the payment for the fiscal year, beginning on the first day of October, nineteen hundred and five, of interest on the canal debt contracted, or to be contracted, under article seven, section four of the constitution, and as provided by chapter three hundred and two of the laws of nineteen hundred and six."

Also, Assembly bill, Chap. 471, entitled "An act making an appropriation for the payment of interest on the debt for highway improvement contracted, or to be contracted, under article seven, section twelve of the constitution, as provided by law, for the fiscal years, beginning on the first day of October, nineteen hundred and five, and on the first day of October, nineteen hundred and six."

Also, Assembly bill, Chap. 470, entitled "An act to provide ways and means for the annual contribution to the highway improvement fund."

Also, Assembly bill, Chap. 461, entitled "An act to provide ways and means for the annual contribution to the canal debt sinking funds." Approved.

"These bills relieve all real property from taxation for State purposes and entirely obliterate the direct State tax. The imposition of a direct annual tax for the payment of principal and interest of State debts for canal and highway purposes was made mandatory by the Constitution of 1894, by an amendment adopted last fall by popular vote, the Legislature was empowered to appropriate moneys in the State Treasury to pay principal and interest

on any debt, and to set apart such moneys for sinking fund purposes, provided that sufficient moneys remained in the general fund to justify that course.[n]

The amount to be derived from the direct annual tax this year would have been upwards of $5,000,000. In addition to the contribution of 13-100 of a mill on each dollar of assessed valuation for the $9,000,000 canal debt and sinking fund, it would have been necessary to raise 505-1000 of a mill on each dollar of assessed valuation for the barge canal debt and sinking fund, and 275-10000 of a mill for the highway improvement fund. A tax rate of 6625-10000 of a mill would have been the total result. The direct State tax on a piece of property assessed at $1,000 would have been 66¼ cents. Not since the year 1841 has the State been able to raise its necessary revenues without imposing a tax on real property for State purposes. This rate has varied in amount from 9⅜ mills on each dollar in 1872 to 13-100 of a mill in 1902, 1903 and 1904. If it were not for the policy of indirect taxation for State purposes the land owners would bear practically the entire burden of State as well as local government.

The State's revenues are now derived entirely from the liquor tax, corporation and inheritance taxes, taxes on transfers of stock and the like. The primitive form of land tax has been broken up and personal property, escaping as it does practically all direct taxation, is reached by indirect methods which work little hardship. That this result has been accomplished without curtailing the necessary expenditures of the State for schools, charities, hospitals, prisons and the like, and in the face of unusual necessary appropriations this year, reflects credit upon the financial system of the State, which is now fairly established."

[n] Const. 1894, art. 7, § 11, Am. 1905.

May 24.

Veto of an Assembly bill, entitled "An act to amend the civil service law, relative to retiring veterans."

"This bill provides that veterans of the late Civil War, who have been employed for a period of fifteen years or more in the civil service of the State, or of any city, county, town or village thereof, shall, upon reaching the age of sixty-five years or thereafter, upon their own request, be retired from employment, and shall receive for life one-half the salary or wages paid to them in the last year of their employment; provided, however, that the amount so to be paid to any such retired veteran shall not exceed the sum of six hundred dollars per annum.

It is objectionable for four reasons:

1. In form it is an amendment to the Civil Service Law; in substance it is a pension bill and therefore not germane to the general provisions of the Civil Service Law.

2. No appropriation has been made whereby funds would be available to pay such pensions should the bill be approved.

3. It provides for a service pension, without regard to disability, except in the case of laborers. If a pension system for civil employees is to be established, provision should first be made for the veteran who is compelled through physical disability to retire from active employment.

4. It tends towards the establishment of a general pension system for civil employees, to which the State and the civil divisions thereof should not, in my judgment, be committed at this time."

May 29.

Memorandum filed with Senate bill, Chap. 657, amending the Railroad Law in relation to liability for injuries to employees. Approved.

"The rule of the common law governing the liability of

employers to employees for the acts of negligent fellow-servants is very strict, common employment being, in general terms, a defense where death or injury results through the negligence of a fellow-servant. This rule has been found to work undue hardship as applied to our present industrial conditions, and the tendency has been to modify it by judicial decisions and statutory enactments.

In 1886 England passed an act which abolished the fellow-servant doctrine with reference to the operation of railroad trains, and in 1897 the English employers' liability act was extended to include other hazardous employments. Many of the United States have passed laws modifying the doctrine as to railroad employees, and at least one state has abolished it entirely.

The New York employers' liability act of 1902 modified the strict common law rule in this regard only so far as to permit a recovery where personal injury is caused to an employee by reason of the negligence of a coemployee 'whose sole or principal duty is that of superintendence.'

This act entirely eliminates the fellow-servant rule so far as relates to the negligence of employees of railroad corporations who have the authority to direct or control other employees or who have physical control of signals, switches, engines, cars, trains or telegraph offices and makes the company liable for the negligence of such employees when injury results to a fellow-servant, himself free from negligence contributing to the injury. Where the rule is strictly in force, practically no responsibility exists for death or injury caused by the negligence of a fellow-servant. Such a rule is not calculated to diminish the risks of accident necessarily incurred in the hazardous employment of operating railroads. The modification thereof for the benefit of railroad employees in other jurisdictions has not resulted in undue hardship to the railroad companies, but rather in the exercise of greater care on their part to protect their employees from injury.

This bill has been criticised as unconstitutional, as including in a class by themselves all railroad corporations without regard to the various duties of their employees, ignoring alike the fact that a large proportion of railroad employees are not engaged in extra-hazardous occupations, and the fact that many occupations outside of railroading are equally hazardous with that of operating railroad trains; but railroad corporations may, in the discretion of the Legislature, be placed in a class by themselves for many purposes of legislation, and if such classification is in part arbitrary the courts may limit the objectionable clauses by construction, as has been done in other states.

The bill has also been criticised because it may result in creating a personal liability on the part of the negligent fellow-servant where no such liability now exists. In my judgment this danger is more imaginary than real, and no such liability could arise except where the failure to exercise common prudence resulted in injury to one who was himself in the exercise of due care and diligence at the time. The benefits to the employees as a class would far outweigh any incidental disadvantages."

May 29.

Veto of an Assembly bill entitled "An act to amend the railroad law, relative to the transportation of freight."

"This bill, commonly known as the 'Demurrage Bill,' imposes a mandatory obligation upon railroad companies to furnish cars, not exceeding two cars a day, to a shipper, on four days' notice, under a penalty of one dollar per car per day; fixes the free time for loading and unloading cars and the demurrage fees that railroad companies may charge and collect, and provides for prompt shipments after cars are loaded and prompt placing of cars for unloading at the point of destination.

A similar law of the State of Texas was held unconsti-

tutional in the recent case of Houston and Texas Central Railway v. Mayes, 201 U. S., 321 (decided April 2, 1906), so far as interstate commerce was concerned, on the ground that it amounted to a regulation of commerce between the states, the power to make such regulations being vested exclusively in Congress. While this bill is less stringent than the Texas act, the terms of the above decision indicate clearly the opinion of the court that such legislation is not a proper exercise of the police power of the state to make needful rules for the convenience of shippers but is a regulation of interstate commerce which the state has no authority to make.

Many of the principal railroads operating in this State are interstate roads and the effect of a judicial determination that the railroads are, in the absence of congressional restrictions thereon, free, where the cars in transit cross State lines, to make their own regulations in regard to the matters sought to be regulated by this bill, would be to so greatly minimize its importance and so discriminate against the local lines that the bill would serve only to disappoint those whom it is intended to benefit."

May 29.

Veto of an Assembly bill entitled "An act to amend sections five hundred and seventeen, five hundred and nineteen, five hundred and twenty-seven and five hundred and thirty-two of the code of criminal procedure in relation to appeals in criminal actions and proceedings."

Also an Assembly bill entitled "An act to amend section five hundred and thirty-two of the code of criminal procedure in relation to transmitting papers on appeal to the appellate court."

"The purpose of these bills is to permit the defendant in a criminal case to take an appeal to the Appellate Division of the Supreme Court from an order denying a motion for a new trial on newly discovered evidence, made

after an affirmance of a judgment of conviction by the Court of Appeals and a further appeal to the Court of Appeals from an order of the Appellate Division of the Supreme Court affirming an order denying such motion. Such an order is not now appealable.

Contrary to the general rule governing code amendments, it is provided that these bills shall apply to any such order, whether made prior or subsequent to the passage thereof.

Waiving the objection to the bills that, though general in form they are special in their application, and are intended to grant a right of appeal to Albert T. Patrick to obtain a review of an order, if such order be made, denying his pending motion for a new trial on newly discovered evidence, I disapprove them for the reason that they introduce a new procedure to our criminal law and tend to defer indefinitely the termination of a capital case.

A new trial on the ground of newly discovered evidence can be granted only if such evidence has been discovered since the trial, is not cumulative and the failure to produce it on the trial was not owing to want of diligence. It is not held that not more than one motion for a new trial on the ground of newly discovered evidence can be entertained, and such motion may be made at any time before execution. By successive motions for new trials and appeals therefrom, made for dilatory purposes only, the execution of the sentence after judgment of conviction and affirmance thereof by the Court of Appeals, in a capital case, might be postponed indefinitely.

Rice, of whose murder Patrick is accused, died on September 23, 1900, nearly six years ago. The law's delays in this case seem to me little less than scandalous. In cases of extreme hardship, where the judge before whom the motion for a new trial is made denies the defendant's motion without giving proper consideration to such evidence, the Constitution provides a practical remedy. An

amendment to the Code of Criminal Procedure might, however, well be made, which would permit defendant's application for a new trial in a capital case to be made to any justice of the Supreme Court within the judicial department where the conviction was had, so that the defendant may not be required in any case to present his motion to the judge presiding at his trial."

June 1.

Veto of a Senate bill entitled "An act to regulate transfers of goods in bulk."

"Unconstitutional under the decision of the Court of Appeals in Wright v. Hart, 182 N. Y., 330, on the similar act of 1902. The changes in phraseology do not meet the main objection of the court that such enactments cannot be regarded as a valid exercise of the police power of the State."

June 1.

Memorandum filed with Assembly bill, Chap. 668, entitled "An act to provide for the construction of a new lift or hoist bridge over the Oswego canal at North Salina street in the city of Syracuse, and making an appropriation therefor."

And veto of Senate bill number 1091, entitled "An act authorizing the construction of a bridge over the Erie canal at Lyell avenue in the city of Rochester."

"I have approved the bill providing for the construction of the bridge in Syracuse, and have disapproved the bill providing for the construction of the bridge in the city of Rochester, for the reason that the Syracuse bill provides that the city shall contribute $31,250 and the Syracuse Rapid Transit Railway Company the sum of $12,500 toward the cost of the bridge, before the sum of $31,250 appropriated from the State treasury is available for said

improvement, while the Rochester bill appropriates $60,000, the entire expense of the improvement, from the State treasury and the city contributes nothing toward the same."

June 1.

Memorandum filed with Assembly bill, Chap. 686, making appropriations for certain expenses of government.

"The total of general appropriations, exclusive of canal sinking fund, barge canal and highway appropriations, passed by the Legislature this year was $27,276,314.76; I have disapproved bills and items to the amount of $227,712, leaving a total of $26,998,602.76, as compared with $26,703,270.07 for 1905.

The direct tax for the old canal debt sinking fund and the barge canal debt sinking fund and for highway improvements has been done away with by the appropriation of $5,325,000 from the State's indirect revenues for such purposes.

The finances of the State were never in a more prosperous condition. The fiscal year ending September 30, 1907, should leave a working balance of about $8,000,000 in the State Treasury.

We have had, by way of unusual necessary appropriations, the following:

For the relief of earthquake sufferers.....	$250,000 00
Insurance investigation	100,000 00
Albany Normal college (fire).....	350,000 00
New educational building	400,000 00
New Prison	75,000 00
	$1,175,000 00

Economy has been manifested in the appropriations for the departments and extravagance has been carefully avoided.

The Legislature has been clean, courageous, independent, intelligent and industrious.

The most important work of the past year has been the insurance investigation and the enactment into law of the recommendations of the Armstrong joint legislative committee. We now have an insurance code framed for the policy-holders and not moulded by the insurance companies.

Next in importance, I rate the two acts which at once do away with the annual mortgage tax and the direct State tax. The Legislature determined that the State should encourage thrift and economy by relieving the landowner from the burden of taxation for the great canal and highway improvements voted by the people, and by shifting the cost thereof from the country farm and the village home to the centers of wealth and commercial activity, at the same time assuring lower rates of interest to borrowers on mortgage security and thereby promoting the growth and development of the cities.

The Legislature has been the partisan neither of labor nor of capital, but has dealt fairly with both, to the end that justice and equality might characterize its acts, rather than hatred of wealth on the one hand or disregard of the workingman's interests on the other. A law regulating the rate of wages and hours of labor of employees of municipal contractors has been made operative; employees engaged in the extra-hazardous employment of railroading have been given a remedy for personal injuries where practically none existed heretofore, and the labor law and the public health law have been materially strengthened.

Bills regulating the rates of service of public utility corporations, which seemed confiscatory, premature or unreasonable have not become law, but the failure of last winter's Legislature to give New York city an eighty-cent gas law has been atoned for.

Rapid transit facilities for New York city have been increased, and the discontinuance of the death-dealing operations of the railroad in Eleventh avenue has been assured.

In no Legislature of recent years has the absolute divorce between politics and business been more noticeable. A Corrupt Practice law has been enacted, corporations have been prohibited from making political contributions, and the lobbyist has been driven from the halls of legislation. The freedom of the Legislature from corporate influence working through party organization for mutual advantage has been manifest.

A serious and intelligent effort to do away with the abuses of the so-called Raines law hotels has been made.

An attempt to strengthen the alliance between racetrack gambling and the agricultural societies has met with rebuke.

Two State commissions have been abolished, and no new permanent commissions or offices have been created except in response to the constitutional amendments adopted by the people.

Wholesome amendments have been made to the statutes regulating the winding-up of corporations by receivers, whereby the allowance of excessive fees to receivers and their counsel is prohibited and final settlements are expedited.

The franchise tax law and the stock transfer tax law have been amended in the interests of the localities benefited and of the State, and the personal property of non-residents situate within the State has been subjected to taxation.

An appropriation of $150,000 has been made for the maintenance and repair of good roads constructed with State aid. For the first time since the establishment of this system of highway improvement, the towns have been relieved from this expense and the State Engineer and Surveyor has been charged with the direction of the work."

June 1.

Veto of items in the supply bill, Chap. 686:

"On page 7: 'For the judges of the court of claims in addition to the sums heretofore appropriated for salaries and expenses, six thousand, six hundred dollars ($6,600), or so much thereof as may be necessary.'

On pages 8 and 9: 'The sum of twelve thousand, six hundred and sixteen dollars and seventy-one cents (re. $12,616.71), being the unexpended balance of the appropriation made by chapter seven hundred and one of the laws of nineteen hundred and five, for the payment of expenses of the joint committee of the senate and assembly of nineteen hundred and five, for investigating and examining into the organization and operation of gas and electric lighting companies of the city of New York, is hereby reappropriated for postage and expenses of committees, compensation of witnesses, legislative manual, clerk's manual, and indexing the bills, journals and documents of the senate and assembly and other contingent expenses of the legislature.'

On pages 11 and 12: 'together with an unexpended balance of any appropriation heretofore made for legislative printing.'

On page 22: 'For Henry B. Coman in full for services and disbursements as attorney and counsel for the comptroller of the state of New York, pursuant to the designation of the governor and attorney-general under the provisions of the executive law, in the case of the town of Tonawanda versus Nathan L. Miller, as comptroller of the state of New York, the sum of sixteen hundred and eighty-nine dollars and twenty-two cents ($1,689.22), or so much thereof as may be necessary.'

On page 25: 'For O. C. Breed, for services performed and expenses incurred by him, in making investigations

and obtaining evidence in respect to claims against the state on account of the Phoenix dam, two hundred and seventy-four dollars and twenty-five cents ($274.25), to be paid on the certificate of the state engineer and surveyor.'

On page 37: 'For the purpose of repairing docks, buildings and pavilions and the care of state lands in the state reservation on the Saint Lawrence river, two thousand dollars ($2,000), or so much thereof as may be necessary.'

On page 41:

'STATE INSPECTOR OF GAS METERS.

'The sum of one thousand three hundred and thirty-three dollars and thirty-four cents (re. $1,333.34), being the unexpended balance of appropriation made by chapter seven hundred and twenty-eight, laws of nineteen hundred and four, for services of ten mechanics employed by the inspector of gas meters, is hereby reappropriated for office and other expenses, including the providing of seals to be affixed to meters, as provided by chapter seven hundred and thirty-two, laws of eighteen hundred and ninety-nine.'

On page 42: 'the further sum of three thousand dollars ($3,000), the vouchers for which shall be officially verified by the director of said laboratory and approved by the state commissioner of health.'

On page 47: 'for barn at Graycroft with silos, five thousand five hundred dollars ($5,500).'

On page 48: 'for extension of eight-inch water main from central group of cottages, four thousand dollars ($4,000).'

On page 48: 'for completing cement walk, one thousand dollars ($1,000); for addition required to complete fence on Monhagen avenue, one thousand dollars ($1,000).'

On page 49: 'For new roof, main building, two thousand, two hundred dollars ($2,200); for pointing up main building, one thousand, five hundred dollars ($1,500).'

On page 51: 'For a building for industries, eighteen thousand dollars ($18,000).'

On pages 63 and 64: 'For the construction of a new and enlarged culvert under the Oneida Feeder to the Erie canal where the now, so-called state ditch passes under such feeder, about one-fourth of a mile south of said canal in the city of Oneida, according to plans and specifications thereof, to be prepared by the state engineer and surveyor, the sum of five thousand dollars ($5,000), or so much thereof as may be necessary.'

On page 64 'For the completion of the work authorized by chapter seven hundred and seven of the laws of nineteen hundred and four, and to be expended in accordance with the provisions thereof, the sum of eight thousand dollars ($8,000), or so much thereof as may be necessary.'

On page 64: 'For repairs to the state dock at Babylon, the sum of two hundred dollars ($200), or so much thereof as may be necessary.'

On page 81: 'To aid in extending the free winter courses for farmers' sons and daughters in the state college of agriculture at Cornell university, ten thousand dollars ($10,000), or so much thereof as may be necessary.'

The above bill presented to me, containing several items of appropriation of money, I hereby pursuant to the provisions of section 9 of article IV of the Constitution, object to the above-mentioned items contained therein, while approving the other portion of the bill, and I hereby append to the bill at the time of signing it this statement of the items to which I object. I object to said items for the reason that the expenditures authorized are, in my judgment, unnecessary or inexpedient at this time.''

June 1.

Memorandum filed with Senate bill, Chap. 693, entitled "An act to increase the number of justices of the supreme court in the first, second and ninth judicial districts of the state and to provide additional justices therein."

Also, with Senate bill, Chap. 694, entitled "An act to provide for an additional justice of the supreme court in and for the fifth judicial district."

Also, with Senate bill, Chap. 695, entitled "An act to increase the number of justices of the supreme court in the eighth judicial district of the state, and to provide for additional justices therein."

APPROVED.

"The following amendment to the Constitution became of force on January 1, 1906: 'The legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last state, or federal census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last state or federal census or enumeration.'[o]

Until this amendment was adopted, the Constitution fixed the number of Supreme Court justices in each judicial district of the State, but this amendment permits the Legislature to make an addition to the present force of thirty-eight justices, an increase of 50 per cent. The Legislature has exercised the discretion lodged in it to create

[o] Const. 1894, art. 6, § 1, Am. 1905.

new judgeships from time to time as the needs of the State require, by passing bills providing at once for twenty-five additional justices, or two-thirds of the total possible increase.

Of the seventy-six Supreme Court justices of the State, thirty, or over 39 per cent. are assigned to appellate courts, as follows:

Court of Appeals	3
Appellate Division	24
Appellate Term	3
	30

The percentage of justices assigned to appellate work from the eight districts respectively, as they existed prior to the creation of the new ninth district, is arbitrary and varies from 50 per cent. in the third, fourth, sixth and eighth districts to 29 per cent. in the seventh district.

The number of trial judges remaining in each district is as follows:

First	15
Second	7
Third	3
Fourth	3
Fifth	4
Sixth	3
Seventh	5
Eighth	5
Ninth	1

While a majority of the judges assigned permanently to the Appellate Division in each department must be residents of the department to which they are assigned, the Constitution clearly contemplates the assignment of justices to the Appellate Division outside of the departments in which they reside. It was seriously urged in the con-

stitutional convention that a majority of such justices should at all times be nonresidents of the department to which they were assigned. The State Bar Association, at its session in January, adopted a report which upheld the designation of justices to perform duties on the Appellate Division from districts outside of the departments in which they are called upon to serve, as 'an important and valuable feature of our Appellate system.' The report condemned the plan of keeping the judges at home as 'provincial and narrow.' At present seven of the twenty-four justices assigned to the Appellate Division are nonresidents of the departments in which they sit. It is improbable that this number will be reduced in the near future, as no such designation terminates prior to December 31, 1907, and it is safe to assume that the practice of assigning justices to appellate duty outside of the departments in which they reside will not be discontinued.

I am advised that, as the number of trial justices in the respective departments is increased, so the work of the Appellate Division will be increased, that additional assignments of justices to the Appellate Division in the First Department may become necessary to enable it to keep up with its work, and that the maximum increase allowed in the First District will be absorbed in trial business so that no greater number of justices from such district will be available for appellate duty.

The increase in population in the First District and the congested calendars now found there indicate that the increase of eight justices in such district will when the present calendars are cleared up, be needed in order to prevent a recurrence of the law's delays, which now result in great hardship.

The same conditions prevail in the old Second District, including the new Ninth. The number of untried jury cases in Kings county has nearly doubled in the past three years, and is about 10,000 at present. In the Fifth District, out-

side judges are called in when available, but new cases accumulate more rapidly than the old ones are disposed of.

No less than seven trial and special term justices are demanded in the Eighth District. Five only are now available, and in order that seven may be at all times available, the proposed increase of two in that district must be approved.

Where cases cannot be tried promptly in court, references become necessary. Referees' and stenographers' fees are large and the expense must be borne by the parties. Litigants are denied justice when it is difficult and almost impossible for them to get equity cases to trial in court, and they are forced to consent to a reference.

Supreme Court judges are State officers, whose salaries are paid from the State treasury, except as they receive additional compensation from the city of New York when holding court there. While I do not contend that justices should be elected in one district merely to supply the needs of another district, it should not be overlooked that an additional judge in the First District imposes upon the Eighth District the same expense that an additional judge in the Eighth District imposes upon that district, and that, as there is no direct State tax, the increase of the judiciary nowhere adds to the general real and personal property tax.

Taking all these matters into consideration, I am led

First, to condemn the constitutional amendment which leaves the Legislature and the Governor subject to importunities to make at once an increase which should be made gradually;

Secondly, to condemn any unnecessary increase of the number of judges as tending to multiply expense and reduce the standard of merit and fitness of judicial candidates;

Thirdly, to condemn the practice of compensating judges for services outside their departments at a higher rate than they receive at home, and

Finally, to consider what disposition to make of the pending bills.

I approve the bill providing for eight additional justices in the First District. This is the maximum increase for this district, but on the same basis of population as that applied outside the First and Second Districts, the possible increase would be seventeen.

The ten additional judges provided for the Second District, including the new Ninth, are demanded with practical unanimity. The possible increase is sixteen, and, on the basis prevailing up the State, the possible increase would be twenty-six.

The addition of one justice in the Fifth District, where at present the Constitution permits an increase of two, seems proper in view of the population and business activity of the district. In the Eighth District the bar looks upon an increase of two, which is but one-half of the possible increase, as conservative and proper, and such increase seems necessary in order that trial and special term work may be disposed of satisfactorily and with reasonable dispatch.

I am of the opinion that, with these increases, the remaining districts will suffer no serious inconvenience, and I have not approved the bills for additional justices in the Third, Fourth and Sixth Districts."

June 2.

Memorandum filed with Assembly bill, Chap. 691, entitled "An act to amend chapter one hundred and seventy of the laws of nineteen hundred, entitled 'An act to provide for the selection, location, appropriation and management of certain lands along the palisades of the Hudson river for an interstate park and thereby to preserve the scenery of the palisades' relating to the extension of said park."

Also, with Senate bill, Chap. 676, entitled "An act to provide for acquiring the land known as Watkins Glen, in Schuyler county, and making an appropriation therefor."

Also, with Assembly bill, Chap. 681, entitled "An act to provide for the acquisition and preservation of the historic mansion and blockhouse, formerly owned by Sir William Johnson, in the city of Johnstown, and making an appropriation therefor." Approved.

"The first bill provides for the preservation of Hook Mountain, on the Hudson River. The second appropriates money for the purchase of Watkins Glen, and the third provides for the acquisition by the State of the mansion of Sir William Johnson, whose name is identified with the Colonial and Revolutionary history of the State.

I have approved these bills in accordance with the policy stated by me in my first annual message, that the preservation of historic objects or picturesque places of the State should be encouraged.[p] Funds for the purchase of the Hook Mountain property will be furnished by private individuals, the State lending its power of eminent domain and acquiring title to this property without expense to the taxpayers.

My prediction that it would not be necessary for the State to expend large sums of money in the preservation of places of scenic and historic interest is to this extent verified, and it is to be hoped that the State may in the future advance by legislation wherever possible the protection of natural scenery and points of historic interest through the co-operation of individuals and societies interested therein."

June 2.

Memorandum filed with Senate bill, Chap. 698, in relation to the apportionment of the free school fund. Approved.

"This bill is a measure for the benefit of the rural school districts of the State, and it is aimed to help the class of schools where the school taxes are the heaviest. State aid

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[p] See *ante*, p. 746.

for educational purposes should be generously bestowed for the purpose of providing thorough instruction in the elementary branches in the country districts, where the desire for education is as earnest and the results obtained are as valuable as anywhere in the State.

The effect of this bill is to give 1,426 districts with an assessed valuation of less than $20,000, an advance of $50 each in their apportionment and to give 4,560 districts with an assessed valuation between $20,000 and $60,000, an advance of $25 each over what is now received."

June 2.

Veto of an Assembly bill entitled "An act to amend section three hundred and eight of the code of criminal procedure, in relation to compensation of counsel assigned by the court."

"This bill is retroactive and permits an allowance to be made by counties for services in capital cases where no such allowances could lawfully have been made at the time when such services were rendered. This is repugnant to the Constitution (art. VIII, section 10), which provides that 'no county * * * shall hereafter give any money * * * to * * * any individual.' Such payment would, under the decision of the Court of Appeals in Matter of Chapman, 168 N. Y. 80, be a mere gratuity."

June 2.

Veto of a Senate bill entitled "An act to amend the public health law in relation to examinations in dentistry."

Also, a Senate bill entitled "An act to amend the public health law in relation to the practice of dentistry, by defining the practice of dentistry, and providing for examinations and the correction of the registers kept by the regents and county clerks."

"These two bills were received at the Executive Chamber at the same time. Each bill amends subdivision 4 of section 166 of the Public Health Law. The amendments

are inconsistent, and both bills cannot receive approval, as the second bill, in order of signing, would supersede the first. The first bill, although general in form, is intended for the relief of an individual who has failed to pass his examinations to obtain a license to practice dentistry. The bill is strongly opposed by the Department of Education, the State Dental Society and the State Board of Dental Examiners as being retroactive special legislation.

The second bill is approved by the Department of Education and the State Dental Society. It is for the most part general in its nature and meritorious, in that it provides for the correction of the registers of dentists kept by the regents and county clerks, but it also contains objectionable special legislation in general terms, and is made retroactive in order to reach a case where the courts have sustained the right of the individual to engage in the practice of dentistry."

June 4. The omnibus veto included the following bills:

The following bills are not approved because of being unconstitutional, defectively drafted, duplicates, special laws where relief can be had under existing law, or generally objectionable by reason of proposed changes:

Assembly bill number 378 (Introductory No. 359, Senate reprint No. 1241), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Margaret J. Wallace against the state of New York, and to render judgment therefor."

Assembly bill number 1616 (Introductory No. 1260), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of James Abeel against the state of New York for damages to his lands near Little Falls, New York."

Senate bill number 1200 (Introductory No. 910), entitled "An act to confer jurisdiction on the court of claims to hear, audit

and determine the alleged claim of Ella Nagle against the state of New York for damages alleged to have been sustained by her and to render judgment therefor."

Assembly bill number 389 (Introductory No. 370), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of George W. Roth against the state of New York and to render judgment therefor."

Assembly bill number 510 (Introductory No. 480, Senate reprint No. 1242), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Michael O'Keefe against the state of New York, and to render judgment therefor."

Assembly bill number 743 (Introductory No. 662, Senate reprint No. 1243), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Lizzie B. Cusick against the state of New York, and to render judgment therefor."

Assembly bill number 787 (Introductory No. 691, Senate reprint No. 1250), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Charles F. Parker and company against the state of New York, and to render judgment therefor."

Assembly bill number 717 (Introductory No. 636, Senate reprint No. 1244), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of William Conway as administrator of the goods, chattels and credits of James Hendy, deceased, against the state of New York, and to render judgment therefor."

Senate bill number 1199 (Introductory No. 909), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the Argus company, of Albany, New York, against the state for damages alleged to have been sustained by them and to render judgment therefor."

Assembly bill number 739 (Introductory No. 658), entitled "An act to confer jurisdiction upon the court of claims to hear,

audit and determine the alleged claim of Manheim Brown, against the state, for damages alleged to have been sustained by him, and to render judgment therefor."

Assembly bill number 1854 (Introductory No. 1372), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of George Devitt, Patrick Mulheron, George E. Manville and Hiram Wood against the state for damages alleged to have been sustained by them, their grantors and assigns and to render judgment therefor."

Assembly bill number 1979 (Introductory No. 1462), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of the several counties containing towns, villages or cities bonded to aid in the construction of any railroad passing through such towns, villages or cities, on account of the payment to the state of the state taxes collected from such railroads within such bonded towns, villages or cities."

Assembly bill number 1050 (Introductory No. 782, Senate reprint No. 1255), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of John J. Moriarty against the state of New York, and to render judgment therefor."

Assembly bill number 1184 (Introductory No. 978, Senate reprint No. 1247), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of any officer or member of the state militia against the state of New York for counsel fees and expenses, and to render judgment therefor."

Assembly bill number 631 (Introductory No. 581, Senate reprint No. 1248), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the C. E Dibble company of Schenectady, New York, against the state of New York and to render judgment therefor."

Assembly bill number 1465 (Introductory No. 1170, Senate reprint No. 1254), entitled "An act to confer jurisdiction upon

the court of claims to hear, audit and determine the alleged claim of Margaret Weishem against the state of New York and to render judgment therefor."

Assembly bill number 443 (Introductory No. 413, Senate reprint No. 1239), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the claims of Anna Androvic and Stanislaus Androvic against the state of New York and to render judgment therefor."

Assembly bill number 821 (Introductory No. 714, Senate reprint No. 1252), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Louis Windholz against the state of New York and to render judgment therefor."

Assembly bill number 1355 (Introductory No. 1101), entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of the town of Indian Lake, Hamilton county, against the state for moneys paid out for services of fire wardens and persons assisting in extinguishing forest or woodland fires, alleged to be due such town from the state and to render judgment therefor."

Senate bill number 1280 (Introductory No. 404), entitled "An act to authorize the improvement of the channel of the Chemung canal and the channel of Catharine creek from Seneca Lake to and through the village of Montour Falls in the county of Schuyler, and making an appropriation therefor."

Assembly bill number 1934 (Introductory No 504), entitled "An act to authorize the building of a dike or dikes for the protection of property adjacent to the Delaware river in the village of Port Jervis, and making an appropriation therefor."

Assembly bill number 1207 (Introductory No. 708), entitled "An act to amend the membership corporations law, in relation to the election of managers and trustees."

Assembly bill number 915 (Introductory No. 274, Senate reprint No. 1458), entitled "An act to amend the highway law, in relation to the improvement, repair and maintenance of highways."

Assembly bill number 1579 (Introductory No. 1014), entitled "An act to amend the code of civil procedure, relative to fees of jurors."

Assembly bill number 831 (Introductory No. 518), entitled "An act to amend the poor law, relating to the relief of soldiers, sailors and their families."

Senate bill number 974 (Introductory No. 744), entitled "An act to amend chapter three hundred twenty-eight of the laws of nineteen hundred and four, entitled 'An act to amend chapter ninety-one of the laws of eighteen hundred and ninety-five, entitled "An act to amend the incorporation of the society of the war of eighteen hundred and twelve."'"

Assembly bill number 1647 (Introductory No. 1277), entitled "An act to amend the tax law, in relation to the exemption of the real property of colleges and universities."

Assembly bill number 1439 (Introductory No. 472), entitled "An act to amend the membership corporation law, by authorizing the deposit with county treasurers of funds for the permanent care of lots in rural cemeteries."

Senate bill number 1257 (Introductory No. 246), entitled "An act to increase the number of justices of the supreme court in the third judicial district of the state, and to provide additional justices therein."

Senate bill number 29 (Introductory No. 29), entitled "An act to increase the number of justices of the supreme court in the fourth judicial district of the state, and to provide an additional justice therein."

Senate bill number 1192 (Introductory No. 911), entitled "An act to increase the number of justices of the supreme court in the sixth judicial district of the state, and to provide an additional justice therein."

Senate bill number 1312 (Introductory No. 966), entitled "An act to provide for the election of justices of the supreme court in the first judicial district, in addition to the justices now in office."

Senate bill number 1425 (Introductory No. 302), entitled "An act to amend chapter five hundred and twenty-three of the laws of eighteen hundred and ninety, entitled 'An act in relation to the office of sheriff of the city and county of New York,' relative to salaries."

Senate bill number 1221 (Introductory No. 923), entitled "An act to provide for the lighting of streets, avenues, highways, public places and public buildings, outside of incorporated villages, in towns in the county of Westchester."

Assembly bill number 1624 (Introductory No. 975), entitled "An act to amend chapter one hundred and twelve of the laws of eighteen hundred and ninety-six."

Assembly bill number 519 (Introductory No. 489), entitled "An act to legalize the acts of William H. Tibbitt, a justice of the peace of the town of Fabius, Onondaga county."

Assembly bill number 2169 (Introductory No. 1414), entitled "An act to amend chapter one hundred and forty-two of the laws of eighteen hundred and seventy-nine, entitled 'An act to amend chapter one hundred and twenty-five of the laws of eighteen hundred and forty-two, entitled "An act to condense and amend the several acts relating to the village of Albion,"' and the several acts amendatory thereof, in relation to the schools and school district of such village."

Assembly bill number 1037 (Introductory No. 208), entitled "An act to transfer the town of Ashford, Cattaraugus county, from the third to the first school commissioner's district of such county."

Senate bill number 666 (Introductory No. 561), entitled "An act to legalize the acts of Luke O'Toole, a commissioner of deeds."

Assembly bill number 896 (Introductory No. 760), entitled "An act to amend the highway law, in relation to the qualified abandonment of highways."

Assembly bill number 231 (Introductory No. 231), entitled "An act to prevent traffic in the office of notary public."

Assembly bill number 239 (Introductory No. 239), entitled "An act making an appropriation to the Central New York institution for deaf mutes, at Rome, to enable it to extinguish its debt incurred for the support and education of its deaf and dumb pupils and for the paving of the street fronting its property."

Assembly bill number 1907 (Introductory No. 1327), entitled "An act to extend the time for the completion of the New York Canadian Pacific railway."

Senate bill number 1367 (Introductory No. 916), entitled "An act making an appropriation to pay the apportionment of state school moneys under subdivision four of section five of title two of chapter five hundred and fifty-six of the laws of eighteen hundred and ninety-four."

Assembly bill number 1541 (Introductory No. 651), entitled "An act to amend the forest, fish and game law, by providing additional game protection for Jamaica bay and adjacent waters on Long Island and making an appropriation therefor."

Assembly bill number 987 (Introductory No 826), entitled "An act to authorize the police commissioner of the city of New York, in his discretion, to reopen and reconsider the resignation of Harry A. Carrigan, as a member of the police department and force of the city of New York, and to appoint, reappoint, reinstate and restore him as a patrolman in the police department and force of said city."

Assembly bill number 1394 (Introductory No. 255), entitled "An act to authorize the comptroller of the city of New York, in his discretion, to examine into the facts concerning the extra and additional work performed by Daniel Douglass in connection with contract made between the city of New York acting by and through its commissioner of water supply, gas and electricity with the said Daniel Douglass dated January ninth, nineteen hundred and five, for hauling and laying water mains and appurtenances in Hart and various other streets as therein mentioned."

Assembly bill number 1394 (Introductory No. 255), entitled "An act to enable the police commissioner of the city of New

York, to rehear and determine the charges against Charles E. Savage, formerly a patrolman of the police department of said city, and to reinstate him in said department."

Assembly bill number 1393 (Introductory No. 101), entitled "An act to enable the police commissioner of the city of New York, to rehear and determine the charges against Francis J. Hughes, formerly a patrolman of the police department of said city, and to reinstate him in said department."

Assembly bill number 426 (Introductory No. 402), entitled "An act to authorize the board of estimate and apportionment of the city of New York, to hear, determine, audit and allow the alleged claim of John W. Carpenter for services alleged to have been rendered between the first day of January, nineteen hundred, and the first day of October, nineteen hundred, inclusive, as clerk of the municipal court of said city in the third district of the borough of Brooklyn."

Assembly bill number 1251 (Introductory No 1035), entitled "An act authorizing the fire commissioner of the city of New York to rehear the charges upon which John J. Lyons, formerly a fireman in the fire department of said city, was dismissed from said department and to reinstate him in his former position."

Assembly bill number 592 (Introductory No. 543), entitled "An act to enable the fire commissioner of the city of New York to rehear and determine the charges against William H. Weise, fireman of the first grade, for reinstatement in said department."

Senate bill number 732 (Introductory No. 613), entitled "An act to act to provide for the claim of Joseph Fiesel, junior, for plumbing work and material furnished the board of education of Long Island City during the year eighteen hundred and ninety-one."

Senate bill number 998 (Introductory No. 786), entitled "An act to provide for the payment of the claim of the Brown and Fleming contracting company for the material furnished to the department of highways, borough of Queens, city of New York."

Senate bill number 277 (Introductory No. 254), entitled "An act for the relief of Bartholomew Moynahan, in payment for

services as stenographer and for stenographic minutes of trials, held in the criminal term, part one of the supreme court, furnished to the city of New York."

Assembly bill number 1904 (Introductory No. 1413), entitled "An act authorizing the fire commissioner of the city of New York, to rehear and retry the charges upon which James McCullen, formerly a fireman in the fire department of said city, was dismissed from said department and to reinstate him in his former position."

Senate bill number 1352 (Introductory No. 868), entitled "An act to authorize the board of estimate and apportionment of the city of New York in its discretion to examine into the facts concerning the services rendered by Charles A. Phillips as clerk to a coroner of the borough of Brooklyn, city of New York, and to provide for the payment of such claim."

Assembly bill number 390 (Introductory No. 371), entitled "An act to authorize the police commissioner of the city of New York, in his discretion, to reopen the investigation of the legality of the appointment of Joseph Devlin as a member of the police department and force of the city of New York to make a reinvestigation of the same and to reinstate or restore him as a roundsman in the police department and force of said city."

Assembly bill number 720 (Introductory No. 639), entitled "An act to authorize the dock commissioner of the city of New York, in his discretion, to reopen the proceedings on which Henry Head, an engineer, was dismissed from the dock department of the city of New York, and to rehear and determine the charges against the said Henry Head."

Senate bill number 1354 (Introductory No. 883), entitled "An act to authorize the board of estimate and apportionment of the city of New York, in its discretion, to examine, audit and allow the claim of the Uvalde asphalt paving company for compensation for work, labor and services rendered and for materials and supplies furnished to the city of New York at the request, order and direction of the commissioner of public works of the borough of Brooklyn and the president of the borough of Brooklyn."

Senate bill number 59 (Introductory No. 59), entitled "An act to provide for the better collection of unpaid assessments for local improvements in the town of West Seneca, Erie county, New York."

Assembly bill number 876 (Introductory No. 579), entitled "An act to amend the civil service law, in relation to the qualification of applicants for civil service examinations."

Assembly bill number 1537 (Introductory No. 711), entitled "An act to amend the state printing law, relative to printing messages and reports."

Assembly bill No. 242 (Introductory No. 242), entitled "An act to amend the highway law, in relation to state aid in towns under the money system."

Assembly bill number 1734 (Introductory No. 1168), entitled "An act to amend chapter five hundred and ninety-four of the laws of eighteen hundred and ninety-nine, entitled 'An act authorizing boards of supervisors to acquire the rights, franchises and property of individuals and corporations exacting toll for the use of turnpikes, plank roads and bridges.'"

Senate bill number 663 (Introductory No. 557), entitled "An act to amend the highway law, in relation to exempting Westchester county from the poll tax."

Assembly bill number 1266 (Introductory No. 1039), entitled "An act to amend chapter two hundred and fifty-eight of the laws of nineteen hundred, entitled 'An act in relation to the court of appeals law library at Rochester,' relative to librarians."

Assembly bill number 125 (Introductory No. 125, Senate reprint 1240), entitled "An act to release to Henry C. Gibson, all the right, titles and interest of the people of the state of New York acquired by escheat or otherwise in and to certain lands in Lawrence, Nassau county, New York, of William Smith, deceased and to confirm the title of the grantee."

Senate bill number 779 (Introductory No. 350), entitled "An act to amend the code of civil procedure, relative to the time to publish in substituted service."

Senate bill number 1078 (Introductory No. 165, Senate reprint 1060), entitled "An act to amend the tax law, in regard to taxation of state lands in towns of Dannemora and Altona, in Clinton county."

Senate bill number 1454 (Introductory No. 759), entitled "An act to establish a ferry from the highway adjacent to the farm of George H. Huber, in the county of Essex, across Lake Champlain."

Assembly bill number 306 (Introductory No. 306), entitled "An act to amend the code of civil procedure, relative to exemptions of jurors from service."

Senate bill number 500 (Introductory No. 227), entitled "An act to release to the children of Joseph Roebuck, deceased, the right, title and interest of the people of the state of New York, acquired by escheat, in and to certain real estate, situate at Maspeth, in the borough of Queens, in the city of New York."

Assembly bill number 636 (Introductory No. 586), entitled "An act to authorize the comptroller to hear and determine the application of William C. Robinson and Boyden Robinson for the redemption of lot number forty-two, township twenty-one, in the town of Long Lake, Totten and Crossfield's purchase, Hamilton county, from the sales thereof by the comptroller for unpaid taxes in the years eighteen hundred and eighty-five and eighteen hundred and ninety."

Assembly bill number 1418 (Introductory No. 1145), entitled "An act to authorize the comptroller of the state of New York to hear and determine the application of Arthur Dreyer, for the cancellation of a tax sale made by the said comptroller in the year eighteen hundred and ninety-five against lot number twenty on 'Map of Property on the North Shore of Staten Island belonging to John C. Thompson,' situated in the former town of Northfield, now the third ward of the borough of Richmond, county of Richmond and state of New York."

Assembly bill number 210 (Introductory No. 210), entitled "An act in relation to the salaries of the record clerks of the court of general sessions of the peace in and for the county of New York."

Assembly bill number 175 (Introductory No. 158), entitled "An act to release to the heirs of Margaret Tracy, widow of Dennis Tracy, of all the right, title and interest of the people of the state of New York, in and to certain real estate situate in the town of Deerpark, county of Orange and state of New York, acquired by escheat or otherwise, upon the death of said Dennis Tracy."

Assembly bill number 737 (Introductory No. 656), entitled "An act to amend the forest, fish and game law, in relation to fire wardens in certain towns in Jefferson county."

Assembly bill number 742 (Introductory No. 661, Senate reprint No. 1383), entitled "An act to amend the forest, fish and game law, in relation to spearing fish in Lake Ontario."

Senate bill number 1455 (Introductory No. 323), entitled "An act to amend the forest, fish and game law, in relation to the close seasons for game in Orange county."

Assembly bill number 719 (Introductory No. 638), entitled act to amend the forest, fish and game law, in relation to the Kayutah lake."

Assembly bill number 1185 (Introductory No. 979, Senate reprint No. 1449), entitled "An act to amend the forest, fish and game law, in relation to the close season for hares and rabbits in certain counties."

Senate bill number 291 (Introductory No. 267), entitled "An act to amend the forest, fish and game law, in relation to the close season for hares and rabbits in Orange county."

Senate bill number 604 (Introductory No. 383, Assembly reprint No. 2149), entitled "An act to amend the forest, fish and game law, relating to fishing through the ice."

Assembly bill number 1711 (Introductory No. 1303, Senate reprint No. 1385), entitled "An act to amend the forest, fish and game law, in relation to taking fish through the ice in Lake Neahtahwanta."

Senate bill number 817 (Introductory No. 674), entitled "An act to amend the insanity law in relation to the salaries of certain officers and employees of state hospitals."

Assembly bill number 1790 (Introductory No. 127), entitled "An act to amend an act entitled 'An act in relation to elections,' constituting chapter six of the general laws."

Assembly bill number 2256 (Introductory No. 1587), entitled "An act to amend chapter seven hundred and thirty-four of the laws of nineteen hundred and four, entitled 'An act to establish a permanent commission for the regulation of the flow of water courses in this state in aid of the public health and safety, to be known as the river improvement commission,' in relation to the effect of assessing the entire expense on the individual and corporate properties benefited."

Assembly bill number 2263 (Introductory No. 1549), entitled "An act to empower the commissioners of the land office to hear the memorial of the Cayuga nation of Indians."

Assembly bill number 1836 (Introductory No. 820), entitled "An act to amend the code of civil procedure, relative to fixing costs and allowances in surrogate's courts and amounts thereof."

Assembly bill number 2411 (Introductory No. 1272), entitled "An act to amend chapter six hundred and ninety of the laws of eighteen hundred and ninety-two, entitled 'An act in relation to insurance corporations constituting chapter thirty-eight of the general laws' as amended by the laws of nineteen hundred and six, so far as it relates to securities title guaranty corporations."

Senate bill number 1143 (Introductory No. 727), entitled An act to amend the highway law, in relation to poll taxes in Suffolk and Westchester counties."

Assembly bill number 687 (Introductory No. 168), entitled "An act to amend the code of civil procedure, relative to public records in New York county by including as a matter of record evidence the observations of the weather taken under the direction of the New York meteorological observatory of the department of parks of the city of New York."

Assembly bill number 1952 (Introductory No. 1456, Senate reprint No. 1297), entitled "An act fixing the salaries of the county detectives of Kings county."

Assembly bill number 2039 (Introductory No. 1345), entitled "An act to amend section three hundred and seventy-three of the code of criminal procedure, as to number of peremptory challenges in a criminal case."

Assembly bill number 1810 (Introductory No. 702), entitled "An act to amend the public health law, in relation to pharmacy."

Assembly bill number 1752 (Introductory No. 1321), entitled "An act to amend the highway law, in relation to poll taxes in towns under the money system."

Assembly bill number 1524 (Introductory No. 363), Senate reprint No. 1429), entitled "An act to amend the consolidated school law, in relation to the apportionment of state school moneys."

Senate bill number 948 (Introductory No. 748), entitled "An act to legalize, ratify and confirm the audit of the board of supervisors of the county of Dutchess, auditing the bill of Allan H. Hoffman as sheriff of the county of Dutchess, covering a period from November first, nineteen hundred and two, to November first, nineteen hundred and three."

Senate bill number 1038 (Introductory No. 716), entitled "An act to authorize and empower the city of New York to establish and maintain in the borough of Brooklyn, city of New York, a free college, and to authorize and empower corporations conducting work of a collegiate character to consolidate with, merge in or enter into contracts with the Brooklyn college."

Senate bill number 1062 (Introductory No. 686), entitled "An act authorizing the register of the county of New York to appoint an additional deputy."

Assembly bill number 394 (Introductory No. 52, Senate reprint No. 1102), entitled "An act in relation to the appointment of justices' clerks by the justices of the city court of the city of New York."

Assembly bill number 2360 (Introductory No. 1646), entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow and the comptroller of the city of New York to pay to George V. Kelly compensation

for services rendered to said city in the office of the coroner of the borough of Queens, in the years nineteen hundred and four and five as a clerk in said coroner's office."

Assembly bill number 1612 (Introductory No. 1256), Senate reprint No. 1343), entitled "An act to authorize the board of estimate and apportionment of the city of New York in its discretion to examine into the facts concerning the services rendered by Hector McNeile as clerk to a coroner of Kings county, and to provide for the payment of such claim."

Assembly bill number 95 (Introductory No. 95), entitled "An act to extend Hickory street in the city of Utica through the lands of the state hospital at Utica, New York."

Assembly bill number 1543 (Introductory No. 853), entitled "An act to amend section thirty-four of the Greater New York charter in relation to licensing auctioneers."

Senate bill number 928 (Introductory No. 742), entitled "An act to amend chapter five hundred and eighty-two of the laws of nineteen hundred and five, entitled 'An act to empower the board of assessors of the city of New York to estimate and allow damages sustained by owners of real property abutting upon Vernon avenue adjacent to Newtown creek, borough of Queens, in the city of New York, by reason of the construction of the bridge over Newtown creek, between Manhattan avenue in the borough of Brooklyn and Vernon avenue, in the borough of Queens, and the approaches thereto.'"

Assembly bill number 1273 (Introductory No. 1046), entitled "An act authorizing the board of estimate and apportionment of the city of New York to audit and allow and the comptroller of said city to pay Ernest H. Juergens compensation for services rendered to said city in the law department, in the years eighteen hundred and ninety-nine and nineteen hundred as office boy."

Assembly bill number 98 (Introductory No. 98), entitled "An act authorizing and directing the board of estimate and apportionment of the city of New York, in its discretion to audit and allow, and also authorizing and directing the comptroller of the city of New York to pay to James C. Daly, compensation for

services rendered to the city of New York as superintendent of sections in the department of docks and ferries of said city."

Assembly bill number 2327 (Introductory No. 1632), entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' relating to pensions to members of the police force of said city."

Senate bill number 1177 (Introductory No. 299), entitled "An act to amend section fifteen hundred and thirty-two of chapter four hundred and ten of the laws of eighteen hundred and eighty-two, known as the consolidation act, as amended by chapter eighty-one of the laws of eighteen hundred and eighty-eight."

Senate bill number 263 (Introductory No. 244), entitled "An act to legalize the acts of Nelson B. Simon, a commissioner of deeds."

Senate bill number 1089 (Introductory No. 847, Assembly reprint No. 2394), entitled "An act to amend sections three hundred and fifteen, three hundred and seventeen and three hundred and twenty-one of article fifteen of the tax law providing for a tax on transfers of stock."

Assembly bill number 1713 (Introductory No. 1308), entitled "An act to release to Michael Watters, Mary Watters, Mary Fleming the second, Thomas Fleming, Margaret Fleming, Annie Jones and Elizabeth Fleming, all the right, title and interest of the people of the state of New York, in and to certain real estate in the borough of Brooklyn, county of Kings, city of New York, acquired by escheat or forfeiture upon the deaths of Henry Fleming and Mary Fleming."

Assembly bill number 444 (Introductory No. 414), entitled "An act to release to John Scott Power the right, title and interest of the people of the state of New York in and to certain real estate in the village of Woodside, Queens county, New York, acquired by escheat or forfeiture upon the death of Margaret J. Power."

Senate bill number 1426 (Introductory No. 25) entitled "An act to amend subdivision two of section twenty-four of chapter

one hundred and twelve, of the laws of eighteen hundred and ninety-six entitled 'An act in relation to the traffic in liquors, and for the taxation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws.' "

Assembly bill number 2075 (Introductory No. 849), entitled "An act to amend section three hundred and eighty-three of the Greater New York charter, as re-enacted by chapter four hundred and sixty-six of the laws of nineteen hundred and one, relative to powers and duties of borough presidents."

Senate bill number 334 (Introductory No. 304), entitled "An act to authorize the board of estimate and apportionment of the city of New York, in its discretion, to examine, audit, and allow the claims of James T. Ellett and Frank Miller, for compensation for services rendered as secretary and watchman, respectively, to the Richmond county park commissioners."

Senate bill number 1353 (Introductory No. 869), entitled "An act to amend the Greater New York charter, in relation to inferior courts of criminal jurisdiction."

Assembly bill number 1906 (Introductory No. 303), entitled "An act to amend chapter five hundred and sixty-two of the laws of eighteen hundred and ninety-eight, entitled 'An act to extend the time of the Little Falls, Van Hornesville and Otsego lake narrow gauge railroad company to begin the construction of its road and expend thereon ten per centum of the amount of its capital and finish and put the same in operation,' in relation to extending time."

Assembly bill number 2378 (Introductory No. 1548), entitled "An act to amend chapter six hundred and twenty-six of the laws of nineteen hundred and three, entitled 'An act to suspend the limitation of time for commencement of construction or the completion of railroads while in the hands of receivers,' in relation to the limitation of time for such commencement, construction and completion."

Senate bill number 1356 (Introductory No. 822), entitled "An act to provide for the payment of the claim of the Donlon contracting company for cleaning the brick sewers of the borough of Brooklyn in the city of New York."

Senate bill number 742 (Introductory No. 395), entitled "An act to change the title of chapter five hundred and twenty-three of the laws of eighteen hundred and ninety, entitled 'An act in relation to the office of sheriff of the city and county of New York,' to 'An act in relation to the office of sheriff of the county of New York,' and to amend said chapter, as amended by chapter six hundred and thirty-six of the laws of eighteen hundred and ninety-seven."

Assembly bill number 2217 (Introductory No. 917), entitled "An act to amend the election law, relative to the creation, division and alteration of election districts."

Senate bill number 1424 (Introductory No. 1010), entitled "An act to authorize the comptroller of the state of New York to hear and determine the application of James Jones for the cancellation of tax sales of lot number six, Woodhull tract, situated in the town of Wilmurt, in the county of Herkimer."

Assembly bill number 2193 (Introductory No. 1397), entitled "An act to amend chapter three hundred and seventy-eight of the laws of eighteen hundred and eighty-three, entitled 'An act in relation to receivers of corporations,' in relation to commissions and the designation and compensation of counsel, and repealing the section of the revised statutes relating to the compensation of receivers."

Assembly bill number 2216 (Introductory No. 1570), entitled "An act to repeal certain acts relating to the city of Syracuse."

Senate bill number 1217 (Introductory No. 919), entitled "An act to legalize the proceedings of the board of trustees of the village of Sandy Hill in borrowing certain moneys."

Assembly bill number 2267 (Introductory No. 1598), entitled "An act to authorize the city of Buffalo to enter into contracts with adjacent towns and villages regarding drainage and sewerage."

Senate bill No. 1309 (Introductory No. 954), entitled "An act to authorize electors of the village of Geneseo to vote upon a proposition for the purchase of a site and the erection thereon

and the furnishing of a building for general village and fire department purposes, and to authorize the issue of bonds for such purpose, and to levy a tax therefor."

Assembly bill number 1912 (Introductory No. 1298), entitled "An act to amend the code of civil procedure, relative to compensation of deputy sheriffs attending courts in the county of Richmond."

Senate bill number 1279 (Introductory No. 812), entitled "An act to amend the military code, relative to pay and allowances."

Senate bill number 390 (Introductory No. 356), entitled "An act to authorize the board of trustees of school district number two, town of North Hempstead, county of Nassau, to retire certain bonds of said district and to issue other bonds in lieu thereof."

Senate bill number 1071 (Introductory No. 829), entitled "An act authorizing the board of trustees of the village of Peekskill in the county of Westchester to appoint a building commissioner, and empowering said board to regulate and supervise the construction of buildings and matters appertaining thereto in said village."

DEATH OF GOVERNOR HIGGINS.

Mr. Higgins was taken seriously ill soon after the termination of his official service, which occurred on the 31st of December, 1906. He died at his home at Olean on the 12th of February, 1907. The next day Governor Hughes sent the following message to the Legislature:

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *February* 13, 1907.

TO THE LEGISLATURE:

It is with deep sorrow that I announce the death at Olean on February 12th of

FRANK WAYLAND HIGGINS,

recently Governor of this State.

His public career and the distinguished services rendered by him to the State are fresh in your memory. For

nine consecutive years he sat in the Senate and by the nobility of his character, his sagacity, and his conscientiousness in the discharge of every duty he won the friendship and high esteem of all his colleagues regardless of party affiliations. Later, as Lieutenant-Governor, he presided over the deliberations of the Senate with dignity and impartiality. His administration as Governor was characterized by honesty of purpose and by painstaking fidelity, and was made notable by the achievement of most important reforms. As his health failed he continued his work without flinching, counting no personal sacrifice too great which would enable him to perform his duty. No soldier on the battle-field ever exhibited greater heroism than was his when, at the peril of his life, he made his last public appearance to discharge what he conceived to be his public duty on the occasion of his successor's inauguration.

He was a man of the highest integrity, and he has left to the people of the State the precious memory of a character without blemish.

In recognition of his services I have ordered that the flags upon the public buildings be displayed at half mast, and I recommend such further action by the Legislature as may be deemed appropriate.

CHARLES E. HUGHES.

On the 14th, the Senate adopted the following concurrent resolutions, which were offered by John Raines, Temporary President, and which were concurred in by the Assembly the same day:

"WHEREAS, The announcement of the death of Frank Wayland Higgins, late Governor of the State, has occasioned deep sorrow to all citizens, and especially to the members of the Legislature, in which body, as a member of the Senate, and also as its presiding officer, he had long rendered most faithful and acceptable service. Be it

"*Resolved,* That a joint committee of the Senate and Assembly, consisting of sixteen Senators, including the Temporary President of the Senate, and nineteen members of the Assembly, including the Speaker of the Assem-

bly, be appointed by the President of the Senate and the Speaker of the Assembly, respectively, to represent the Legislature at the funeral of ex-Governor Higgins. It is further

"*Resolved,* That a committee of five Senators and nine members of the Assembly be appointed by the President of the Senate and the Speaker of the Assembly, respectively, to prepare suitable resolutions, and to arrange for appropriate public memorial exercises in commemoration of the life and services of Governor Higgins. It is further

"*Resolved,* That out of respect to the memory of the deceased, no session of the Legislature shall be held on Friday, February 15th, but that when the Legislature adjourns to-day, it be to meet on Monday evening, February 18th, at 8.30 o'clock."

A committee of each house was appointed to attend the funeral. On the 18th of February, Horace White, Albert T. Fancher, William J. Tully, Samuel J. Ramsperger, and James J. Frawley were appointed as Senate members of the joint committee on memorial services, and on the 20th, Jesse S. Phillips, James T. Rogers, John K. Patton, Charles W. Mead, J. Mayhew Wainwright, John J. Volk, John C. Hackett, Thomas J. Farrell, and Frank S. Burzynski were appointed Assembly members of the same committee. Senator White was made chairman of the joint committee. On the 7th of March the committee reported to both houses that arrangements had been made for memorial services to be held in the Assembly Chamber on the 8th of April.

In the evening of that day, after a brief session of each house, the Senate and Assembly met in the Assembly Chamber for the memorial services. There were also present judges of the Court of Appeals, justices of the Supreme Court and State officers, besides many other invited guests. Senator White, chairman of the committee on arrangements, called the meeting to order and introduced Governor Charles E. Hughes, who presided. Prayer

was offered by Rev. James W. Ashton, Rector of St. Stephen's Episcopal Church of Olean. Anthems were rendered by the choir of St. Peter's Episcopal Church, Albany. Governor Hughes introduced Jacob Gould Schurman, President of Cornell University, who delivered the memorial address. After another selection by the choir the benediction was pronounced by the Rt. Rev. Thomas M. A. Burke of Albany.

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